

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 EVAN GREEBEL,

7 Defendant.

15-CR-637 (KAM)

United States Courthouse  
Brooklyn, New York

October 31, 2017  
9:00 a.m.

8  
9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL  
10 BEFORE THE HONORABLE KIYO A. MATSUMOTO  
11 UNITED STATES DISTRICT JUDGE  
12 BEFORE A JURY

11 APPEARANCES

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25 Proceedings recorded by mechanical stenography. Transcript  
produced by computer-aided transcription.

1 (In open court; Jury not present.)

2 THE COURT: All right have a seat, please.

3 Are there any issues we need to resolve?

4 MS. SMITH: No.

5 THE COURT: I just wanted to further follow up on  
6 Mr. Dubin's question at the end of the trial day yesterday  
7 regarding his question about on my rulings on objections.

8 So let me explain a little further. The question  
9 about, you know, the lawyers say --

10 MR. PITLUCK: Judge, I'm sorry, the microphone is  
11 not on.

12 THE COURT: The question about, you know, whether a  
13 witness knew that a law firm was the largest in the world  
14 assumes a fact not in evidence and in fact is not true. Paul  
15 Weiss is ranked 26 on any ranking I've looked at, and my  
16 concern was that we can't have lawyers putting facts before  
17 the jury that are not properly before it.

18 The other questions, some of which Mr. Brodsky drew  
19 objections for included misstatements of direct testimony; you  
20 know, didn't you testify on direct that X, Y and Z and, in  
21 fact, he hadn't testified on direct in that manner or there  
22 were factual errors about dates or parties, and so it was just  
23 sustaining the objection based on the question as posed and  
24 that's why I was encouraging Mr. Brodsky to rephrase the  
25 question and correct the form of the question and the facts

1 contained therein.

2 So if the parties do have issues with my objections,  
3 certainly you can ask for a sidebar, but otherwise we will  
4 assume that the parties understand and Mr. Brodsky seemed to  
5 have understood and carried on with his questioning. But  
6 certainly if a sidebar needs to be had, despite the jury's  
7 dislike of sidebars and then certainly we can address  
8 objections and rulings in further detail.

9 MR. MASTRO: Your Honor, we're, of course, loath to  
10 asker sidebars because we want to be sensitive to the jury,  
11 number one.

12 Number two, let's leave the Paul Weiss question  
13 aside. Mr. Brodsky asked a series of questions, a statement  
14 from a document or a statement the witness had made and then  
15 he confronted him with that was not true or that was false.  
16 That's classic cross-examination. And Your Honor sustained  
17 objection after objection, and the prosecution may not like  
18 the witness confronted with what you said or what the company  
19 said was not true or false, but that is classic  
20 cross-examination. And if any of us on the defense side think  
21 a witness has said something that is false, it is classic  
22 cross-examination to then say that's false. Okay, and --

23 THE COURT: My understanding of the testimony the  
24 witness was giving and a question drew an objection and  
25 probably because I'm just telling you what I was understanding

1 to be the basis of the objection was that in some instances  
2 mischaracterized what the testimony was on direct. In fact,  
3 the witness for several sets of questions hadn't testified on  
4 a subject on direct or hadn't said what the cross-examination  
5 question was, you know, saying, it just wasn't accurate.

6 MR. MASTRO: So let me just break one down.

7 THE COURT: I mean what we should do is perhaps look  
8 at the transcript, and if you have questions about the ruling,  
9 and you can ask for the sidebar, I'm not saying it's a good  
10 idea and I'm not saying the jury likes it, but if the parties  
11 are clear about the rulings and they need to discuss it more,  
12 you know, in a more fulsome way, then certainly that's what  
13 sidebars are for.

14 MR. MASTRO: I understand, Your Honor, I'm just  
15 saying --

16 THE COURT: I'm not trying to argue with you. I'm  
17 just trying to explain my thoughts.

18 MR. MASTRO: I understand. And I don't want to say  
19 things in a vacuum either.

20 If a witness says something, or a document of the  
21 witness' or the company's says something, I have a right to  
22 say -- Mr. Brodsky at one point read a sentence from a public  
23 filing of Retrophin, and then said that's false isn't it, sir.  
24 And an objection was sustained. And the explanation I heard  
25 was that she didn't think it was false.

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1 Well, that's up to the witness to say whether it was  
2 false or not. I'm allowed to confront him and say, I think  
3 that statement was false. Look the jury in the eye and tell  
4 me that it was false.

5 THE COURT: What statement?

6 MR. MASTRO: It was a quote from a Retrophin filing  
7 about how many shares he had in November 2012. And he  
8 testified I had an arrangement to get 300,000 shares but it  
9 only reported a certain number of shares much less than that.

10 THE COURT: Because he was told by somebody, it  
11 might be Mr. Greebel, that options may not be declared until  
12 60 days before they're exercised.

13 MR. MASTRO: Your Honor, I'm allowed to confront him  
14 about whether that's a false statement, and then he gives his  
15 explanation yes or no. I'm allowed to confront him. I don't  
16 have to accept -- he didn't tell Mr. Greebel that ever. That  
17 was a lie. And I'm allowed to confront him on whether he's  
18 lying or not.

19 THE COURT: I think it was that Mr. Greebel advised  
20 Mr. Shkreli, or Mr. Richardson, or maybe together, I don't  
21 even remember, but there was a document where it said we need  
22 not declare this until -- oh, wait -- Defense Exhibit 104-252,  
23 email from Mr. Greebel dated March 18th, at 11:24 to  
24 Ms. Griswold and Mr. Richardson.

25 MR. MASTRO: That had to do with his options, Your

1 Honor. It doesn't account for the other hundred thousand  
2 shares he was supposed to get besides the options.

3 I'm allowed to confront the witness when I think  
4 there's a false statement, and then he can explain. I don't  
5 have to accept his self-serving characterization of his  
6 testimony earlier when I believe it's not true. I have a  
7 right to confront him in front of that jury and have him  
8 explain and look that jury in the eye whether he was telling  
9 the truth or not. That's classic cross-examination.

10 THE COURT: You interrupted me.

11 MR. MASTRO: I'm sorry, Your Honor. I'm sorry.

12 THE COURT: The email says, Hi, Steve -- to Steve  
13 Richardson from Mr. Greebel -- following up on your  
14 conversation with Michelle, I spoke with Martin and he said  
15 that Retrophin will be issuing you 100,000 shares and such  
16 issuance will occur following the next board meeting as the  
17 board meets to approve the issuance for the work you did as a  
18 consultant. In addition, Martin is going to give you an  
19 option to buy 125,000 shares from him. Under the SEC's rules  
20 you are not required to report the stock underlying the option  
21 until 60 days prior to the option exercise date. Based on  
22 that, we recommend holding off on filing the Form 4 until  
23 after the next board meeting. I believe the next board  
24 meeting will be next week and Martin will follow up on  
25 scheduling.

1           So I mean I just, you know, to the extent you want  
2   to parse this email and what was being told to the witness,  
3   that's fine. But I think if you can point to the specific  
4   matter in the SEC filing that Mr. Brodsky wanted to confront  
5   the witness with and have him admit it was false, we can look  
6   at that, but...

7           MR. MASTRO: Your Honor --

8           THE COURT: If I made an erroneous ruling based on  
9   my understanding of what the evidence was thus far we can  
10   revisit it. But to have somebody stand up at the end of a  
11   trial and say I don't understand objections, please give me  
12   some guidance, here's an example, why was the Paul Weiss  
13   question yet sustained. It's a classic  
14   when-did-you-stop-beating-your-wife type question.

15          MR. MASTRO: Your Honor, I'm trying to point out a  
16   different example.

17          THE COURT: All right, so give me the example. Show  
18   me the SEC filing and the question and we can address it. You  
19   want to revisit it, we'll do it.

20          MR. MASTRO: Mr. Brodsky decided to go on. It's not  
21   my examination.

22          THE COURT: So why don't you let him speak for  
23   himself then? Did you want to talk about what part of the SEC  
24   filing you thought was important and should not have been --  
25   the objection should not have been sustained?

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1 MR. BRODSKY: Well, Your Honor, I don't know if the  
2 jury's here.

3 THE COURT: Are they here? Check.

4 I'm just saying that, you know, it's not helpful to  
5 me at the end of a trial day to ask these general questions.  
6 I mean the time to address the objection and any disagreement  
7 about it is at the time, not days late .

8 MR. BRODSKY: Understood.

9 MR. DUBIN: Your Honor, if it comes up during  
10 another one of my examinations, I will, if I think it's an  
11 important one, I'll certainly ask for a sidebar. I did not  
12 mean to upset, Your Honor.

13 THE COURT: I'm not upset, I'm just trying to  
14 explain what I meant about your example, Mr. Dubin. It just  
15 wasn't accurate. It was a statement of fact and that's why I  
16 told the jury to strike it. I mean --

17 MR. DUBIN: Your Honor, it was not my fault. There  
18 are different rankings for the law firm.

19 THE COURT: They never come out in even in the top  
20 ten, though.

21 MR. DUBIN: Your Honor, I found one that had a  
22 different metric.

23 THE COURT: Okay, what is the ranking, I'll look it  
24 up.

25 MR. DUBIN: My question was one of the largest in



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1 the world. I was just trying to establish with the witness in  
2 that instance that she didn't go to a sole practitioner, she  
3 went to a big prestigious law firm to represent her. Perhaps  
4 I inarticulately asked the question, and I'll make sure that I  
5 do a better job.

6 THE COURT: Just another point that I wanted to  
7 share.

8 Last evening one juror asked Ms. Jackson whether we  
9 would be finished by this Friday, and then another jury said,  
10 No, not this Friday, next Friday. So FYI, in their minds  
11 they're thinking that this case is going to end after five  
12 weeks more, so please just be aware.

13 I have a jury by a civil multi-week trial that was  
14 to start December 4th until December 11th. I'm going to be  
15 working through the holidays. But I wanted to make sure we  
16 have this case tried, I would just please ask both sides to  
17 think about ways to streamline. And oftentimes once a case  
18 gets started, the parties start to move more quickly, but  
19 just...

20 MS. DENERSTEIN: Your Honor, the mic's not on.

21 THE COURT: Once the trial starts, very oftentimes  
22 the pace picks up. So maybe that will happen. Maybe we will  
23 come to a conclusion within five weeks, but in the event we do  
24 go to December 4th, which is something the parties have  
25 suggested, I did adjourn, with great reluctance, three trials

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1 and we will be able to go through December 4th.

2 All right, so everybody ready to start? Good.

3 We'll bring the jury back in minute.

4 (Pause.)

5 (Whereupon, the witness resumes the stand.)

6 THE COURT: Mr. Brodsky, the exhibits we entered  
7 yesterday, are those concluded, can we put them aside or do  
8 you think you'll be going back to them?

9 MR. BRODSKY: Yes. Yes, Your Honor, okay. Yes.

10 THE COURT: I'm just wondering.

11 MR. BRODSKY: Thank you.

12 (Jury enters the courtroom.)

13 THE COURT: Good morning. All right, all jurors are  
14 present. Please have a seat.

15 Mr. Richardson, you're still under oath.

16 And, Mr. Brodsky, you may continue your cross.

17 MR. BRODSKY: Thank you, Your Honor.

18 CROSS-EXAMINATION (Continued)

19 BY MR. BRODSKY:

20 Q Good morning, Mr. Richardson.

21 A Good morning, Counsel.

22 MR. BRODSKY: Can we put up 10457, please. And I  
23 have in order a number of the documents that I'm going to talk  
24 to you, Mr. Richardson, this morning.

25 A Okay, thank you.

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1 Q If you start with that first document.

2 MR. BRODSKY: Mr. Carter, would you mind bringing up  
3 104-57.

4 THE COURTROOM DEPUTY: Is it in evidence?

5 MS. SMITH: No, it's not.

6 MR. BRODSKY: The Government exhibit is in evidence.  
7 One moment, Your Honor.

8 It's the same exact exhibit, may I use this because  
9 it's the same one? We'll get the number in a moment.

10 May I continue, Your Honor, and just use it?

11 Q Mr. Richardson, we'll get the Government exhibit number  
12 which is the equivalent of DX104-77 for identification.

13 Yes, 221.

14 MS. SMITH: 221.

15 THE COURT: Okay, Government's 221 in evidence.

16 MR. BRODSKY: Would you put up Exhibit 221, please.  
17 Thank you.

18 Q Mr. Richardson, this is the exchange agreement you had  
19 with -- I'm going to be very short this morning,  
20 Mr. Richardson.

21 There was an exchange agreement you had in June of  
22 2012 where in June of 2012 you exchanged all of your interests  
23 in MSMB into Retrophin units, right?

24 A Yes, I redeemed the MSMB investments and moved it over.

25 Q And you moved it over.

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1           So at this point by the end of this agreement, which  
2   is dated June 14th, 2012, you no longer have any MSMB  
3   interests.

4   A     That certainly was my understanding.

5   Q     And then turn to, if you wouldn't mind, Section 9, which  
6   is on page 6 of your agreement, R023019, Bates number on  
7   DX221, you see where it says at the top "release by seller?"

8   A     Yes, I do.

9   Q     And in this circumstance, you are releasing, it says  
10   seller and his affiliates. I assume the seller is you,  
11   correct? You're selling your MSMB interests --

12   A     Yes, I am, the MSMB interests.

13   Q     -- to Martin Shkreli who's giving you some of his units  
14   in Retrophin.

15   A     In Retrophin units.

16   Q     And it says, seller, meaning you, Mr. Richardson, and  
17   your affiliates, heirs, successors, and assigns, the releasing  
18   parties, hereby forever and irrevocably release and discharge  
19   and hold harmless the buyer in all capacities, as well as the  
20   buyer's affiliates, heirs, successors, and assigns, and that's  
21   as to all related parties?

22   A     Yes, in this agreement.

23   Q     In this agreement.

24           Sir, you are releasing, it goes on to say, any and  
25   all liability, claims, charges, complaints, grievances, suits,

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1 demands and causes of action of whatsoever nature, known or  
2 unknown, against, or assertible against for anything and  
3 everything whatsoever, electively claims.

4 Do you see that?

5 A Yes, I do.

6 Q So this is a very broad release that releases you from --  
7 releases Mr. Shkreli and any of his affiliates, including  
8 MSMB, correct?

9 A Yes.

10 Q From any and all claims known and unknown.

11 A Yes.

12 Q And that's a standard clause. Have you seen this clause  
13 before in other agreements?

14 A Variations on this, yes.

15 Q And your understanding of why this -- this clause is in  
16 this agreement you have is because it provides protection  
17 against any potential future lawsuit?

18 A Yes, it would.

19 Q And against claims, both known and unknown.

20 What does "unknown claims" mean?

21 A In this capacity, again, because it's just moving into a  
22 new entity, a new startup entity.

23 Q So even if at the time this agreement the claim is  
24 unknown, it would be released. You wouldn't be able to bring  
25 a claim at this time, in June 2012, you didn't know about but

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1 six months later you learned about, you would release it  
2 forever?

3 MS. SMITH: Objection. It's a legal conclusion.

4 THE COURT: I'll overrule it to the extent the  
5 witness can testify to his understanding of this language.

6 A Again, I saw it as unknown in the context of the arrival  
7 of the new company.

8 Q So claims in the arrival of the new company that you  
9 didn't know about at the time of this agreement but you learn  
10 about later, you would be releasing any potential claim  
11 against Mr. Shkreli and his entities?

12 A Not open ended, no. I saw it in the time period as the  
13 company's starting.

14 Q As the company's starting.

15 A As the company's starting.

16 Q In Retrophin?

17 A In Retrophin, yes.

18 Q And after -- it is after you had this exchange agreement  
19 signed in June of 2012, I just want to get the timeline right,  
20 between June and November of 2012, after this agreement, and  
21 before Retrophin goes public, that's when you have a verbal  
22 agreement with Mr. Shkreli where he's going to give you five  
23 plus percent interest in Retrophin.

24 A That's right. It's later in 2012.

25 Q And fair to say, then, that the interest you're expecting

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1 to receive, the approximately 300,000 shares at some point in  
2 2013 that you're expecting to receive, is not related to your  
3 investment in MSMB, because you've converted your investment  
4 in MSMB into a Retrophin interest, right?

5 A That's correct.

6 Q Your interest, your expectation and agreement to get  
7 300,000 shares of Retrophin stock, in or about 2013, is based  
8 on the agreement you developed with Mr. Shkreli after this  
9 exchange agreement and before Retrophin goes public.

10 A That's correct.

11 Q Now, you made a number of attempts, we went over them,  
12 I'm not going to review them again this morning. You went  
13 over a number of attempts, you made a number of attempts to  
14 get Mr. Shkreli to make good on your arrangement that he would  
15 true-up your investment in Retrophin.

16 A Yes, that piece of the 300,000.

17 Q You never threatened litigation against Retrophin.

18 A No, I did not.

19 Q And you, of course, were a board member of Retrophin.

20 A That's correct.

21 Q And part of your legacy is Retrophin.

22 A My personal legacy.

23 Q Your personal legacy.

24 A Yes, very important to me.

25 Q And you would never do anything to hurt Retrophin,

1 correct?

2 A It's certainly not intentional.

3 Q And the MSMB investors who you, from your conversations  
4 with Mr. Shkreli, the MSMB investors who converted their  
5 shares into Retrophin shares were in the very same position as  
6 you, correct? As from what you understand?

7 A On the true-up piece.

8 Q On the true-up piece.

9 A Not to do with the contribution to the company.

10 Q On the true-up piece.

11 A Yes.

12 Q And the MSMB investors who settled with Retrophin were  
13 able to true-up their shares.

14 A That's my understanding.

15 Q No different than what you wanted to do, correct?

16 A That's correct.

17 Q Now, let me talk a little bit about the insider trading  
18 policy briefly.

19 Prior to the board call, and I have it in front of  
20 you, the July -- DX104-65 in evidence, which is the next  
21 document; is that correct? Do I have that right?

22 A 104-65, yes, Counsel.

23 Q Yes, that's in evidence.

24 We talked about these are your notes prior to and  
25 during, depending on the note, the July 3rd, 2013 board



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1 meeting.

2 A Yes.

3 Q And I'd like to turn your attention to the page that has  
4 your note relating to the insider trading policy. It's page 4  
5 of the document and the Bates number is R020831.

6 (Exhibit published.)

7 And down at the bottom, that's your note, insider  
8 trading to cover contractors, temp employees, too, question  
9 mark, right?

10 A Yes.

11 Q And fair to say you don't remember whether that was  
12 covered during the call, correct?

13 A No, I do not recall.

14 Q Now, keeping in mind your words, contractors, temp  
15 employees, too, right, those are your words, so keep it in  
16 mind. Let's put up one Defense Exhibit 104-42, which I also  
17 have in front of you, Mr. Richardson, as the next document.

18 (Exhibit published.)

19 And this is the September 9th, so we're rolling  
20 forward from July 2013, a few months to September. It should  
21 be the large document.

22 A Yes, I have it. This one, yes.

23 Q Perfect.

24 And this is Mr. Panoff sending to you on  
25 September 9th, 2013 at 12:32 p.m., and two of the other board

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1 members, and Mr. Greebel is copied on it, the board agenda and  
2 some exhibits, right?

3 A Yes.

4 Q One of those exhibits, Exhibit G is the Retrophin insider  
5 trading policy, correct?

6 A Yes, it is.

7 Q So I would ask you to turn to the Bates number, if you  
8 use the bottom right-hand corner Bates number, if you go to  
9 R116072 of that document, that is the -- let me know when you  
10 get it.

11 A Zero seven-two, Counselor?

12 Q Zero seven-two.

13 A Okay, thank you.

14 (Exhibit published.)

15 Q This is the Retrophin, Inc. policy on insider trader,  
16 correct?

17 A Yes.

18 Q And you see highlighted and underlined, temporary  
19 employees, contractors.

20 A Yes, I do. Yes.

21 Q So does this refresh your memory that on September 9th,  
22 2013, the board members are being presented with a revised  
23 insider trading policy containing your recommendation that you  
24 wrote in your handwritten notes prior to the July 3rd meeting.

25 A Again, Counsel, I don't remember the sequence of drafts,

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1 the drafts of the document.

2 Q Fair to say that the language that appears here,  
3 temporary employees, contractors, on September 9th, 2013, and  
4 the attachment comes from you?

5 A It certainly is the same language I put forth.

6 Q Was there anybody else, other than you, suggesting that  
7 temporary employees and contractors be included and covered by  
8 the insider trading policy?

9 A I don't know if others did. But it certainly is the same  
10 language that I had written.

11 Q And fair to say that is the language that ends up being  
12 in Retrophin's insider trading policy.

13 A Yes, the version at this point in time; yes.

14 Q And fair to say that starting in or about the fall/winter  
15 2013, did you know that people were signing the insider  
16 trading policy of Retrophin containing those words, "temporary  
17 employees and contractors"?

18 A Yes, I think it was a requirement for new employees.

19 Q And one of the reasons you wanted to include temporary  
20 employees and contractors, as well as the other language of  
21 directors, officers, employees, and consultants, is that you  
22 understood Retrophin was hiring lots of different temporary  
23 people, consultants, contractors of all types?

24 A Yes, I wanted to make sure that the company was protected  
25 from them as well.

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1 Q You signed the insider trading policy in May -- in or  
2 about May of 2014.

3 Do you remember that?

4 A I know there were revisions made in 2014, so I don't know  
5 which version I actually signed.

6 Q Do you recall signing the same version that is adopted --  
7 withdrawn.

8 Do you recall signing the same version that other  
9 employees signed in the fall/winter of 2013? The version you  
10 signed may be the exact same.

11 A I don't recall the timing again, Counsel.

12 Q Okay. Do you remember the document you signed, the  
13 insider trading policy you signed in May of 2014, had the date  
14 on it of September 9th, 2013.

15 A I don't recall that.

16 Q Now, let me turn a little bit to board minutes for a  
17 moment.

18 In January of 2014, Retrophin offered nearly  
19 5 million shares of its common stock for public offering,  
20 right?

21 A Which date, sorry again, Counsel.

22 Q In January 2014.

23 A Yes, January 2014.

24 Q And in connection with an anticipation of the up-listing  
25 on the NASDAQ.

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1 A Correct.

2 Q A very big development in the life of Retrophin.

3 A Yes, the \$40 million raise.

4 Q And Retrophin expected to raise \$40 million, correct?

5 A Yes.

6 Q Now in connection with the transaction, Marc Panoff filed  
7 a sworn declaration, a certification, stating that the board  
8 minutes of the company were true, correct, and complete,  
9 right?

10 A I don't remember that reference.

11 Q You understand that in connection with the public  
12 offering, the CFO of the company had to swear a certification  
13 to the counsel for the underwriters for underwriting the deal  
14 that the board minutes were available, complete, accurate, and  
15 true?

16 A I don't recall that document.

17 Q You understand that the board minutes were available in  
18 connection with the public offering to the underwriter's  
19 counsel, the people who are underwriting the 40 million-dollar  
20 offering to the public?

21 A No, I wasn't aware.

22 Q Now we looked at a number of documents. We talked a  
23 little bit about the questionnaire. Let me ask you to turn to  
24 another document in GX245 in evidence.

25 And if we can just put it up on the screen.

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1 (Exhibit published.)

2 Q Mr. Richardson, this one contains the legal and ethical  
3 code, correct, of the company?

4 A The code of conduct?

5 Q The code of conduct.

6 A Yes.

7 Q And if I could ask you to turn to the page, scroll to the  
8 page where it says "additional legal and ethical  
9 responsibilities, conflicts of interest."

10 Mr. Carter, I think it's about -- I'll tell you how  
11 many pages, nine pages in.

12 (Exhibit published.)

13 MS. SMITH: Your Honor, just for the record, this  
14 document is not in evidence.

15 MR. BRODSKY: Oh.

16 MS. SMITH: Government Exhibit 245 is.

17 MR. BRODSKY: That's what we used. That's what  
18 we're using.

19 MS. SMITH: You originally started DX104-42.

20 MR. BRODSKY: Up on the board is 245.

21 Q If we blow up the conflict of interest provision right  
22 here. And we just look at the last paragraph, this applies to  
23 the board of directors, right? This applies to members of the  
24 board?

25 A Yes, it does.

RICHARDSON - CROSS - BRODSKY

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1 Q And it says, you must be sensitive in any activities,  
2 interests, or relationships that might conflict or even appear  
3 to conflict with your ability to act in the best interests of  
4 the company. Right?

5 A Yes.

6 Q So it's not -- the policy doesn't just apply to actual  
7 conflicts of interest, but anything that has an appearance of  
8 a conflict of interest.

9 A Yes.

10 Q And we talked about it on your cross-examination a little  
11 bit, but isn't it fair to say, Mr. Richardson, that your  
12 arrangement with Mr. Shkreli creates an appearance of a  
13 conflict of interest in 2013?

14 A Again, it was an agreement that I believe was  
15 transparently shared in December of '12.

16 Q In November of '12?

17 A Excuse me, November of '12.

18 Q In November 2013, it was shared with Mr. Aselage.

19 A Yes, through the capitalization table Mr. Shkreli knew.  
20 And then by March of '13, Mr. Greebel knew. And then as soon  
21 as the CFO joined, I shared the news with him in June.

22 So I felt I had been very open with each of the  
23 principals to remove any issue of conflict.

24 Q So just to be clear, your sharing it with Mr. Aselage is  
25 based on the November 2012 email?

RICHARDSON - CROSS - BRODSKY

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1 A At that point, yes.

2 Q Yes. And you're sharing it with Mr. Greebel is based on  
3 the DX104-52. Can we put that up?

4 And that's in front of you, too, Mr. Richardson.  
5 (Exhibit published.)

6 Q Sorry, that's 252. 104-252.

7 This is the email that it's your understanding where  
8 that -- your understanding and Mr. Greebel's informed, right?

9 A Yes, he's had the discussion with Mr. Shkreli.

10 Q Your words, Mr. Richardson, is "misinformed," correct?  
11 He's misinformed about the fact that you were a consultant.

12 A Yes, the word "consultant," yes. It was confirmation  
13 that we had the discussion with Mr. Shkreli.

14 Q The confirmation you had a discussion with Mr. Shkreli  
15 where Mr. Shkreli misinformed him that he was -- you were  
16 going to get 100,000 shares because your work as a consultant,  
17 right?

18 MS. SMITH: Objection, Your Honor.

19 THE COURT: Sustained. Rephrase.

20 Q This is confirmation, sir, that Mr. Shkreli had a  
21 conversation with Mr. Greebel, right?

22 A Yes.

23 Q Confirmation to you or -- withdrawn.

24 From this, your testimony Mr. Greebel is  
25 misinformed, correct?



RICHARDSON - CROSS - BRODSKY

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1 A I was not --

2 Q Not a consultant?

3 A I clearly wasn't a party to the discussion between  
4 Mr. Greebel and Mr. Shkreli.

5 Q Understood.

6 A So I think somewhere in there there was a  
7 miscommunication is what I said, and I think you used the word  
8 "misinformed," and I said, yes, at the end of the day he was  
9 misinformed.

10 Q Actually, Mr. Richardson, I can take out the transcript.  
11 Don't you remember using the word "misinformed" when you saw  
12 that he was -- that you were referred to as a consultant?

13 A On the word "consultant," yes.

14 Q Yes.

15 And you would agree with me, Mr. Richardson, that  
16 the details of your arrangement getting 300,000 shares,  
17 approximately, that's not in the email, right?

18 A No, but the rest of the March emails covered the fact  
19 that there was the top-up coming, which was the stuff coming  
20 from Mr. Shkreli.

21 What Mr. Greebel's referring to is the 100,000  
22 coming from the company.

23 Q Tell me where it says there's going to be a true-up or a  
24 top-up from the company.

25 A What I'm saying is my belief, having Mr. Greebel has now

RICHARDSON - CROSS - BRODSKY

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1 spoken to Mr. Shkreli, that he is now aware of both elements.  
2 That's what I'm saying.

3 Q I got it, Mr. Richardson. I'm asking you to look at this  
4 email. The language that Mr. Greebel writes to you and  
5 Mr. Shkreli -- well, withdrawn. Just to you and another  
6 attorney, Michelle Griswold, and points to the language where  
7 it says that there's an understanding anywhere in that email  
8 that your 100,000 shares is coming from your prior board  
9 membership as a board of managers.

10 A The first 100 says the board needs to approve. And then  
11 he also goes on to say, Martin is going to give you an option  
12 to buy 120,000 from him.

13 So the two elements of the 300,000 are referenced in  
14 here.

15 Q Where is the reference to the fact that this is --  
16 there's a reconciliation coming with respect to anything to do  
17 with MSMB? Is there anything in there?

18 A Well, the option to buy 135,000 shares follows on from  
19 the emails that had 100,000 coming from Mr. Shkreli, and  
20 25,000 coming from Mr. Biestek.

21 Q Where does it say Mr. Biestek's name?

22 A It doesn't say it in here. But what I'm saying, Counsel,  
23 is the other emails had all that information, so I'm reading  
24 this believing Mr. Greebel is now fully informed.

25 Q And you understand, sir, that you believe it's your

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1 perception at this time that Mr. Greebel's fully informed  
2 based on emails, exchanges you had with Mr. Shkreli, right?

3 A Yes. And the fact that Mr. Greebel's confirmed he's  
4 spoken to Mr. Shkreli. So I was left with the impression that  
5 Mr. Greebel had been fully informed.

6 Q Fair to say that Mr. Shkreli -- based on your knowledge  
7 prior to September 2014, is it fair to say that Mr. Shkreli  
8 has left with you impressions that were inaccurate?

9 A Throughout the years?

10 Q From 2009 through September of 2014, is it fair to say  
11 that Mr. Shkreli made statements to you which you then learned  
12 were inaccurate?

13 A Subsequently, yes.

14 Q Based on your knowledge through September of 2014?

15 MS. SMITH: Objection. Asked and answered.

16 THE COURT: You can answer it again.

17 Q Let me --

18 A Sorry, I'm just confused on the time line, Counsel.

19 Q I'm just asking you, based on your knowledge from 2009  
20 through September of 2014, end it at September 2014, forget  
21 what you learned about post-September 2014.

22 A Yes.

23 Q Between that time period, is it fair to say that  
24 Mr. Shkreli made statements to you which you then subsequently  
25 learned during that time period are inaccurate?

RICHARDSON - CROSS - BRODSKY

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1 A Yes.

2 Q And it didn't just happen once, it happened more than  
3 once?

4 A By September of '14, that's true.

5 MR. BRODSKY: If we put up DX8253.

6 Q You should have that in front of you, too.

7 A Yes, Counsel.

8 Q That's an example of -- in evidence.

9 MS. SMITH: It's not in evidence.

10 Q Do you recognize 8253, Mr. Richardson?

11 A The email exchange? Yes, I do.

12 Q And is that between you and Mr. Shkreli on September 7,  
13 2013?

14 A Yes.

15 MR. BRODSKY: We offer it, Your Honor.

16 THE COURT: I don't have it.

17 MR. BRODSKY: Oh. I thought it was in evidence,  
18 Your Honor. I apologize.

19 (Continued on next page.)

20

21

22

23

24

25

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1

2

MS. SMITH: No objection.

3

THE COURT: We will receive Defendant 8253.

4

5

(Defendant's Exhibit 8253, was received in evidence.)

6

7

THE COURT: Would you like to have it back, Mr. Brodsky?

8

9

MR. BRODSKY: No, you can have it. I have other copies.

10

BY MR. BRODSKY:

11

12

Q Mr. Richardson, this is an example of an e-mail exchange between you and Mr. Shkreli relating to your true up where Mr. Greebel is not on the e-mail, right, we saw a number of them?

14

15

A Yes, Mr. Greebel is not copied on this e-mail.

16

17

18

Q Then if we put up DX104-96, blow that up, this is in evidence, this is an example of an e-mail from September -- December 17, 2012, about the loan that you made to Retrophin, correct?

19

20

A Yes.

21

22

23

Q And an example, fair to say, Mr. Richardson, of your expectation that Mr. Shkreli would inform Mr. Greebel that it was a loan?

24

MS. SMITH: Your Honor, asked and answered.

25

THE COURT: With regard to this specific document?

RICHARDSON - CROSS - BRODSKY

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1 MS. SMITH: Yes, and this line of questioning.

2 THE COURT: This was previously covered,  
3 Mr. Brodsky.

4 MR. BRODSKY: Yes, but I don't believe I asked that  
5 question, your Honor.

6 THE COURT: You may answer it then and keep moving.

7 THE WITNESS: Sorry, counsel, you're asking did I  
8 expect Mr. Shkreli to bring Mr. Greebel up to date?

9 Q About this being booked as a loan?

10 A Yes, I would expect that.

11 Q Because my math is so bad I want to go over one final  
12 thing with you, Mr. Richardson. When I went over with you  
13 yesterday you testified that your investment of approximately  
14 \$500,000 was worth about 2.9 million?

15 A Yes, as of today's present stock price.

16 Q You also testified that you expected to receive about  
17 300,000 shares of stock as of late or mid-April 2014, on  
18 April 2014, April 10, 2014 you had an expectation of meeting  
19 with Mr. Shkreli and you were going to talk to him about the  
20 gift of stock?

21 A At that point in time, yes, the same 300,000 of shares.

22 Q The same 300,000 shares. As of that date, Retrophin  
23 stock was worth approximately \$18 a share?

24 A Yes.

25 Q And so that would have been worth \$5.4 million for the

S. RICHARDSON - REDIRECT - MS. SMITH

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1 300,000 shares?

2 A Yes.

3 Q And so in total had you received those shares, the value  
4 of your investment would have been about \$8 million-plus?

5 A Yes.

6 Q It upsets you to this day, Mr. Richardson, that  
7 Mr. Shkreli did not follow through on your arrangement to get  
8 the 300,000 shares, correct?

9 A I certainly would have liked it to have happened.

10 MR. BRODSKY: No further questions, your Honor.

11 THE COURT: Redirect?

12 MS. SMITH: Yes, your Honor.

13 REDIRECT EXAMINATION

14 BY MS. SMITH:

15 Q Good morning, Mr. Richardson.

16 A Good morning.

17 Q Mr. Brodsky asked you a lot of questions on  
18 cross-examination about your ownership of Retrophin stock and  
19 your discussions with Mr. Shkreli about the reconciliation  
20 between what you believed that you owned based on your various  
21 investments and the amount of stock you actually received  
22 after the reverse merger. He talked a lot about the 5 percent  
23 stake and the 300,000 shares. Let's just break that down.

24 You invested \$400,000 into MSMB Capital in 2009 and  
25 2010?

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1 A Yes.

2 Q By June 2012 when we were just looking at Government's  
3 Exhibit 221, you voluntarily redeemed that investment and  
4 transferred it over to Retrophin. And at that time it was  
5 your understanding that it was worth approximately \$583,000,  
6 right?

7 A Yes.

8 Q You also separately invested about \$100,000 into  
9 Retrophin directly, right?

10 A Yes.

11 Q And so when we get to November 2012, before the reverse  
12 merger, you had invested approximately \$700,000 into Retrophin  
13 both directly, and then the MSMB interest that got transferred  
14 over, right?

15 A Yes.

16 Q Mr. Shkreli represented to you at that point that you,  
17 like the other Board members, would receive payment for your  
18 Board service, right?

19 MR. BRODSKY: Objection to the leading question.

20 THE COURT: I think she's just trying to expedite.  
21 But try to rephrase if you can.

22 Q What was your understanding in terms of what you would  
23 receive for your Board service?

24 A Mr. Shkreli said that himself and Mr. Aselage and myself,  
25 Board members, would be getting some recognition for our duty



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1 as Board members.

2 Q That's a common practice for Board members to receive  
3 payment either in the form of shares or stock; is that right?

4 MR. BRODSKY: Objection, your Honor.

5 THE COURT: Try not to lead him. I think that's, if  
6 I'm understanding the objection, it's to leading.

7 MR. BRODSKY: Yes, your Honor.

8 MS. SMITH: I'm trying to move more quickly.

9 THE COURT: I know you are; I appreciate that.

10 MS. SMITH: I can do it without leading.

11 THE COURT: Ask him if it's common or rephrase it.

12 Q What is your understanding whether it's common for Board  
13 members to receive payment for their work in shares or in  
14 stock?

15 A Yes, that is it is common practice for Board members to  
16 get both a mix of cash or stock.

17 Q You testified that the discussion was that all the Board  
18 members would receive that, right?

19 A That was my understanding from Mr. Shkreli.

20 Q So let's look at Government's Exhibit 227, which  
21 Mr. Brodsky showed you this morning or yesterday I believe,  
22 the cap table. You testified both --

23 A In the folders or just on the screen?

24 Q On the screen, I think for the Government's Exhibit it  
25 will move more quickly.

S. RICHARDSON - REDIRECT - MS. SMITH

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1           So you testified both on direct and cross that this  
2           was your understanding from Mr. Shkreli, November of 2012, of  
3           what the cap table actually was, which is on the left; and  
4           then on the right what he kind of wanted it to be; is that  
5           right?

6           A     That's correct.

7           Q     And the percentage, the numbers on the left, represented  
8           what you actually owned at that point in time?

9           A     Yes.

10          Q     And the 5 percent that you and Mr. Shkreli discussed, was  
11          based on your \$700,000 investment in Retrophin and what you  
12          expected that would have translated to at this point in time?

13          MR. BRODSKY: Your Honor, I'm sorry. Objection to  
14          leading.

15          THE COURT: Got it.

16          Q     What, if anything, was your understanding of the  
17          investment that you had from the \$700,000 that you had  
18          invested between MSMB Capital and directly into Retrophin?

19          A     That was a component of the 5 percent, but the balance of  
20          the 5 percent was the recognition for me as a Board member.

21          Q     So the 5 percent that you discussed with Mr. Shkreli  
22          wasn't a random number, but in fact based on the 700,000 that  
23          you invested as well as the whatever recognition you received  
24          as a Board member?

25          A     Yes.

S. RICHARDSON - REDIRECT - MS. SMITH

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1 THE COURT: Ms. Smith, Mr. Brodsky is going to -- he  
2 did object.

3 MR. BRODSKY: Yes, it was a gesture.

4 THE COURT: Stand up and say objection. He doesn't  
5 want you to lead.

6 MS. SMITH: I will slow it down.

7 THE COURT: All right. I'm sorry, we have to comply  
8 with the rules.

9 Q When you -- in March of 2013, when you received the S1  
10 filing, at that point did you have 5 percent of the shares in  
11 Retrophin?

12 A No, I did not.

13 Q Was it the first time that you realized that you did not  
14 in fact have 5 percent of the shares in Retrophin?

15 A That's correct.

16 Q Was that in connection with your receipt of the S1 filing  
17 and the Form 4 prepared by Mr. Greebel?

18 A That's correct, when I first saw the stockholding number.

19 Q Was this the first time that you confronted Mr. Shkreli  
20 and asked for an accounting of what had happened with your  
21 objections?

22 MR. BRODSKY: Objection. Leading.

23 THE COURT: Did you say leading?

24 MR. BRODSKY: Yes, your Honor.

25 THE COURT: That one is overruled.

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1 A Yes, it was the first time I saw the, my actual stock  
2 value with the stock number and how it was trading.

3 Q So let's look at Government's Exhibit 236, which  
4 Mr. Brodsky showed you. Let's turn to the third page of the  
5 document and start with the bottom e-mail.

6 If you remember this, you testified that this is  
7 when you met Marc Panoff for the first time and interviewed  
8 him. Then if we can look at the e-mail above that, what is  
9 the date on this e-mail?

10 A This is dated March 13, 2013.

11 Q Is this an e-mail from Mr. Shkreli to yourself?

12 A Yes, it is.

13 Q What is Mr. Shkreli laying out here for you?

14 A He's laying out what he sees as the investments I've made  
15 to the aggregate to this point in time both in MSMB that I  
16 moved over and then subsequent to that.

17 Q Was this the first time that you got from Mr. Shkreli  
18 that accounting?

19 A Yes.

20 Q Was this the first time that Mr. Shkreli said that he  
21 personally needed to make up to you the difference between  
22 this accounting and your understanding of your investments?

23 MR. BRODSKY: Objection to the leading.

24 THE COURT: Overruled.

25 A Yes, both. I was having now verbal meetings with him in

S. RICHARDSON - REDIRECT - MS. SMITH

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1 addition to the e-mail exchange.

2 Q And if we can look at your response, which is in the  
3 middle of the page here, the page before, what is the date on  
4 your response listing out your accounting of those  
5 investments?

6 A March 14, 2013.

7 Q On cross-examination, Mr. Brodsky questioned you  
8 extensively about when you informed Mr. Greebel that  
9 Mr. Shkreli was going to personally give you additional  
10 shares, right?

11 A I missed that, when I informed Mr. Greebel?

12 Q Yes. Mr. Brodsky asked you when you informed Mr. Greebel  
13 that Mr. Shkreli was personally going to give you shares,  
14 right?

15 MR. BRODSKY: Objection. Misstates what I asked.

16 Q Did Mr. Brodsky ask you on cross-examination --

17 THE COURT: Just ask him whether he ever informed  
18 Mr. Greebel rather than trying to characterize what the prior  
19 testimony was, since Mr. Brodsky is not in agreement that  
20 you're characterizing it properly.

21 Q Why don't I show you what is marked for identification  
22 Government's Exhibit 305. Mr. Richardson, this is in the  
23 small binder in front of you.

24 A Thank you.

25 Q There is a tab towards the back.

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1 A Give me the code, Ms. Smith.

2 Q GX305 on the tabs. Do you recognize this document?

3 A Yes, an exchange between myself and Mr. Greebel.

4 Q Is it dated in March of 2013?

5 A March 13.

6 Q Is this in response to the S1 that you received?

7 A Yes, because I had been in dialogue with one or two of  
8 his societies at Katten, Mr. Greebel became involved in that  
9 set of discussions.

10 MR. BRODSKY: No objection.

11 THE COURT: We will admit Government's Exhibit 305.  
12 You are offering it, right, Ms. Smith?

13 MS. SMITH: Yes, your Honor.

14 (Government Exhibit 305, was received in evidence.)

15 BY MS. SMITH:

16 Q We can start on the bottom of the document. If you look  
17 at bottom of the document, this is an e-mail from a person  
18 named Keun Kim at Katten to Mr. Mr. Shkreli, Mr. Aselage and  
19 yourself copying Mr. Greebel; is that right?

20 A To the Board members copying Mr. Greebel.

21 Q What is the subject line?

22 A Retrophin Board S1.

23 Q Is this the S1 that you received that triggered your  
24 understanding that you had not received the shares in  
25 Retrophin that you expected?

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1 A Yes.

2 Q If you look at the response there in the middle, it's a  
3 little smooshed together, but it's dated March 13, 2013, you  
4 see that?

5 A Yes.

6 Q And it's to Mr. Kim and also Mr. Greebel?

7 A Yes.

8 Q Can you read what you wrote there?

9 A "Keun Kim, the details of my share ownership are not  
10 accurate. Martin S is looking into it. I assume that needs  
11 to be corrected before we can submit."

12 Q The date on that e-mail, again, is March 13, 2013?

13 A Yes.

14 Q Is that the same date as the date in Government's Exhibit  
15 236 where Mr. Shkreli first provides you with an accounting?

16 A Yes, it was the same day.

17 Q Then if we look up to the top of the e-mail, in response  
18 on March 13, Mr. Greebel writes, "Steve, we are trying to file  
19 today. Is there a question I can help you with on your share  
20 ownership?"

21 A Yes.

22 Q You respond the same day, if you can read your e-mail?

23 A "Hi Evan, Martin has owed me for sometime now a clear  
24 reconciliation of my investments in Retrophin and how that now  
25 stands in share ownership. The numbers you're filing and

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1 records show significantly understates my share ownership. I  
2 clearly can't sign a filing while there is such a clear  
3 discrepancy/error. I'm urgently awaiting the correct  
4 information. Thanks."

5 Q So this is, again, the exact same day that you realized  
6 that your ownership is not what you expected and had the  
7 discussions with Mr. Shkreli; is that right?

8 A That's correct, because of the urgency of the S1 filing.

9 Q I'm going to have you take a look at what Mr. Brodsky  
10 showed you marked Government's Exhibit 104-252. It's in the  
11 binder in front of you, if you'd like. If we can focus on the  
12 e-mail in the middle of the page. This is the one that  
13 Mr. Brodsky just showed you, what is the date on this e-mail?

14 A This is dated March 18, 2013.

15 Q Can you just read again what Mr. Greebel wrote in this  
16 e-mail?

17 A "Hi Steve. Following up on your conversation with  
18 Michelle. I spoke to Martin, he said that Retrophin will  
19 issue you 100,000 shares and such issuance will occur  
20 following the next Board meeting, as the Board needs to  
21 approve the issuance of the work you did as a consultant. In  
22 addition, Martin is going to give you an option to buy 125,000  
23 shares from him. Under the SEC's rules you are not required  
24 to report the stock underlying the option until 60 days prior  
25 to the option exercise date. Based on that we recommend



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1 holding off on filing the Form 4 until after the next Board  
2 meeting. I believe the next Board meeting may be next week  
3 and Martin will follow up on scheduling. If you have any  
4 questions, please call me."

5 Q There is a reference in there to the work you did as a  
6 consultant. Mr. Brodsky asked you about that language.

7 Did you -- were you present for any discussions  
8 between Mr. Greebel and Mr. Shkreli regarding the conversation  
9 about your getting reimbursed from Mr. Shkreli?

10 A No, I wasn't party to those discussions.

11 Q Do you know who suggested the word consultant or  
12 consulting, that you would be considered a consultant for this  
13 purpose?

14 A No, I do not know where that came from.

15 Q It says here that the Board needs to approve the issuance  
16 of 100,000 shares for your work as a Board member, right?

17 A Yes.

18 MR. BRODSKY: Objection, your Honor. Misstates the  
19 document.

20 Q It says, The Board needs to approve the issuance for the  
21 work you did as a consultant, but it's 100,000 shares coming  
22 from the company, right?

23 A Coming from the company, correct.

24 Q When shares are coming from the company the Board needs  
25 to approve them, right?

S. RICHARDSON - REDIRECT - MS. SMITH

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1 A That's correct.

2 Q Then if we look at the option, those were the shares that  
3 Mr. Shkreli was going to provide to you personally?

4 A Yes.

5 Q Mr. Greebel says, "Under the SEC's rules you are not  
6 required to report this stock underlying the option until 60  
7 days prior to the option exercise date," right?

8 A That's correct, which is why I believed I did not have  
9 any disclosure requirements, that Mr. Greebel had given me  
10 that guidance.

11 Q Clearly says this option agreement is coming, is going to  
12 be between you and Mr. Shkreli; is that right?

13 MR. BRODSKY: Objection to the leading.

14 Q Does the document say that the option agreement is going  
15 to be between you and Mr. Shkreli?

16 A Yes, it does.

17 Q At this point, Mr. Greebel what is his role at Retrophin?

18 A He is company counsel.

19 Q Is he company counsel during the entire period of 2013?

20 A Yes, he is.

21 Q We saw other e-mails in 2013 with Mr. Greebel where you  
22 discussed Mr. Shkreli giving you shares personally; is that  
23 right?

24 A There were subsequent, I believe around September and  
25 October 2013.

S. RICHARDSON - REDIRECT - MS. SMITH

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1 Q In connection with this March 2013 e-mail, the  
2 September 2013 e-mail, or the October 2013 e-mail, did  
3 Mr. Greebel ever say that you needed to make a disclosure  
4 related to Mr. Shkreli giving you shares personally?

5 MR. BRODSKY: Objection. Leading.

6 THE COURT: Overruled.

7 A No, he did not.

8 Q Was there any discussion of a conflict of interest  
9 related to that arrangement?

10 A No, there was not.

11 Q If there is a need to disclose that arrangement, would  
12 you have expected to Mr. Greebel to advise you of that?

13 MR. BRODSKY: Objection, your Honor.

14 Q What, if anything, would you have expected Mr. Greebel to  
15 tell you about the need for disclosure?

16 MR. BRODSKY: Objection, your Honor.

17 THE COURT: Overruled.

18 Q Related to shares?

19 MR. BRODSKY: Can we have sidebar?

20 THE COURT: Yes. Sidebar.

21 (Continued on the next page.)

22 (Sidebar conference.)  
23  
24  
25

## SIDEBAR CONFERENCE

2569

1 MR. BRODSKY: Your Honor, the question assumes a  
2 legal duty by Mr. Greebel as outside counsel to Retrophin to  
3 provide legal advice to a Board member regarding his own  
4 duties or reporting his own personal arrangement. First, it  
5 assumes a number of facts that are not in evidence and that  
6 are actually contrary to the record. Those facts are that --

7 THE COURT: It's what expectation do you have. She  
8 hasn't assumed any facts.

9 MR. BRODSKY: His personal expectation. As your  
10 Honor ruled before, his personal belief and expectation of  
11 what Mr. Greebel should have done as outside counsel to  
12 Retrophin is not relevant to this case. He should not be  
13 testifying as to what he believes what Mr. Greebel should have  
14 done. It should be based on the bylaws of the company. It  
15 should be based on your legal instructions as to the duty an  
16 outside counsel has. The evidence in this case should not be  
17 based on personal belief by a Board member, who obviously, has  
18 some issues with respect to the facts about what he thought  
19 Mr. Greebel should believe.

20 And the Government is planting this idea for the  
21 jury that if there is this legal duty and obligation,  
22 Mr. Greebel should have said something. Extremely  
23 prejudicial, your Honor. Suggests to the jury that this is an  
24 expectation that is real. Because the whole question assumes  
25 that Mr. Greebel should have said something or should have

## SIDEBAR CONFERENCE

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1 done something, and the law should come from your Honor. The  
2 facts can speak for themselves. What he expected or  
3 personally wanted is not a relevant fact and extremely  
4 prejudicial.

5 MS. SMITH: Mr. Brodsky on cross made an entire  
6 argument that there was in fact a duty to disclose. The  
7 reason that Mr. Richardson thought there wasn't is because  
8 Mr. Greebel didn't tell him that.

9 In multiple discussions where Mr. Greebel is aware  
10 and in fact potentially facilitating Mr. Shkreli, providing  
11 him shares. Personally he never said, we're going to do this,  
12 talk about what the 60-day disclosure would look like. He  
13 didn't say we need to make a disclosure in the filings. He  
14 didn't say there is a conflict of interest. He's company  
15 counsel. He's talking about his responsibilities as a Board  
16 member.

17 Mr. Brodsky opened the door to all of this. And  
18 there is no way for Mr. Richardson to explain why he didn't  
19 disclose, which Mr. Brodsky spent hours on yesterday, without  
20 saying that Mr. Greebel was aware and he would have expected  
21 if there was, if there was a responsibility to disclose, which  
22 I don't even think that necessarily we agree there was, that  
23 Mr. Greebel would have said something, especially since he's  
24 the one drawing up the documents for it.

25 THE COURT: Could you frame the question in a manner

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1 of saying to Mr. Richardson, why didn't did you disclose -- on  
2 cross Mr. Brodsky asked you whether you should have disclosed  
3 X, Y, Z, why didn't you disclose X, Y, Z?

4 MS. SMITH: Yes, I can definitely ask that.

5 THE COURT: That might cover it without an  
6 objection.

7 MS. SMITH: He also asked Mr. Richardson to testify  
8 about what he expected about the legal language in documents,  
9 what does the release mean, what does this mean to you. And  
10 part of his understanding of all of this is coded by the fact  
11 that Mr. Greebel is serving as counsel for the company during  
12 this time period, getting information from Mr. Greebel and  
13 getting documents from Mr. Greebel. And Mr. Greebel is  
14 attending the Board meetings and has an expectation that  
15 Mr. Greebel, if he's doing something that Mr. Brodsky is  
16 suggesting is improper, will say something especially when  
17 he's having a dialogue with Mr. Greebel about that very  
18 subject.

19 THE COURT: The jury will decide what the facts are.  
20 I will instruct them on the law. If you have opened the door  
21 to what Mr. Richardson should have done, why he didn't do  
22 certain things, or communications he had with Mr. Shkreli and  
23 Mr. Greebel with disclosure obligations, what documents he  
24 received, whether he could have picked up the phone to talk to  
25 Mr. Greebel and ask him questions or discuss certain issues

## SIDEBAR CONFERENCE

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1 with him, so I mean it is fair ground on redirect for the  
2 Government to explore those conversations or actions that he  
3 took or didn't take because of his understanding that  
4 documents were coming from the corporation's outside counsel.

5 MR. BRODSKY: Yes, your Honor.

6 THE COURT: I'll instruct the jury on the law. And  
7 they will apply the facts as they find them. But they are  
8 entitled to hear it on redirect.

9 MR. BRODSKY: One, she can ask a non-leading why  
10 questions, which is why didn't you do X, that's appropriate.  
11 But to ask the question what was your expectation is an  
12 inappropriate question.

13 THE COURT: It's not leading, though.

14 MR. BRODSKY: It's not leading, your Honor, but --

15 THE COURT: What, if any, expectations did you have?  
16 I'll instruct them on the duty.

17 MR. BRODSKY: I don't think they can ask the same  
18 question without assuming the duty. I believe it's improper  
19 question --

20 THE COURT: She didn't use the word duty.

21 MR. BRODSKY: She used expectation. It implies a  
22 duty, your Honor. They can ask the why questions.

23 MS. SMITH: Are you saying there is no duty, that  
24 Mr. Greebel had no duty to provide?

25 THE COURT: They are going to get instructions.

SIDEBAR CONFERENCE

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1 It's fair game given the scope of the cross that she can ask  
2 what his understandings were, why he did or did not take  
3 certain actions based on communications from the company's  
4 counsel.

5 MR. BRODSKY: I understand the why question, your  
6 Honor. I don't believe any question that says -- I will  
7 object, I'm going to object, that any question with what is  
8 your expectation.

9 Because his expectation is not relevant, on Rule 401  
10 not relevant; and 403, highly prejudicial.

11 Second, your Honor, we did not open the door to the  
12 notion that Mr. Greebel had this obligation to correct him.

13 THE COURT: You opened the door to his actions  
14 without regard to -- you touched a lot on his actions whether  
15 he should have disclosed, why this SEC filed document did not  
16 contain certain things that you claim he should have exposed.

17 MR. BRODSKY: They can ask him why, they can't ask  
18 what the expectation. That's extremely prejudicial, Rule 401  
19 is irrelevant; 403, prejudicial. We stated our objection.

20 THE COURT: All right. Thank you. Just to avoid  
21 all these discretions, try to formulate your --

22 MS. SMITH: I know. I'm trying to as quickly as  
23 possible but Mr. Brodsky does not want me to lead so I'll stop  
24 that.

25 THE COURT: Ask the who, what, why.



SIDEBAR CONFERENCE

2574

1 MS. SMITH: Mr. Brodsky doesn't know it's common  
2 here to question with leading on, but if he doesn't want me  
3 to.

4 MR. BRODSKY: Your Honor, respectfully, I believe  
5 the Government should always comply with the rules. If they  
6 don't comply with the rules, it's my duty to object.

7 THE COURT: Some of questions are leading and I've  
8 sustained the objection. Simply because the question seeks a  
9 yes or no answer is not leading. What makes it leading is  
10 putting words in the witness's mouth and then ask to affirm or  
11 deny. You know the difference, that's why I had rulings.

12 (End of sidebar conference.)

13 (Continued on the next page.)  
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S. RICHARDSON - REDIRECT - MS. SMITH

2575

1 (In open court.)

2 BY MS. SMITH:

3 Q If we can put Defendant's Exhibit 104-252 back up.

4 Mr. Richardson, in the middle here, March 18, 2013, there is a  
5 discussion about Martin is going to give you an option to buy  
6 125,000 shares from him and under the SEC's rules you are not  
7 required to report this stock underlying the option until 60  
8 days prior to the option exercise date. We discussed, were  
9 there other e-mails later in 2013 that also discussed you  
10 personally purchasing shares from Mr. Shkreli?

11 A Yes, there were.

12 Q Why did you not disclose at that time publicly that you  
13 and Mr. Shkreli had discussed you purchasing shares from him?

14 A Because I understood from Mr. Greebel's advice here that  
15 it was only required within a 60-day window of the exercise of  
16 the stock move itself. At that point no stock had moved.

17 Q Did Mr. Greebel ever subsequently suggest that you should  
18 disclose this potential purchase of stock from Mr. Shkreli?

19 A No.

20 Q Did Mr. Greebel ever subsequently discuss the purchase of  
21 stock from Mr. Shkreli being a conflict of interest?

22 A No.

23 Q What, if anything, was your expectation about what  
24 Mr. Greebel would tell you if there was a need to disclose  
25 something?

S. RICHARDSON - REDIRECT - MS. SMITH

2576

1 A Again, because Mr. Greebel was being copied in those  
2 various communications I understood he would give guidance as  
3 to what the appropriate disclosure aspects would be at that  
4 time.

5 Q Mr. Brodsky also asked you if you told Mr. Panoff about  
6 this possibility of purchasing shares from Mr. Shkreli. Did  
7 you tell Mr. Panoff?

8 A Yes, I informed Mr. Panoff with the true up that I was  
9 one of the people in the queue when he first joined the  
10 company in June of 2013.

11 Q Did Mr. Panoff ever discuss with you the need to disclose  
12 that potential purchase of shares from Mr. Shkreli?

13 A No, he did not.

14 Q Ultimately did you get paid for your service as a Board  
15 member?

16 A Not for this period of time, no.

17 Q Ultimately what period of time did you get paid for being  
18 a Board member?

19 A The first payment I got was for, from the end of December  
20 of 2013 forward into 2014.

21 Q Were you the only Board member who received payment for  
22 your services?

23 A No, all the Board members. The new Board compensation  
24 was put in place for all Board members at that time, at the  
25 end of 2013.

S. RICHARDSON - REDIRECT - MS. SMITH

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1 Q Was that compensation approved by the Board?

2 A Yes, it was.

3 Q Changing topics, you were also asked by Mr. Brodsky about  
4 freely traded shares; is that right?

5 A Yes.

6 Q You were first asked about your testimony on direct then  
7 shown a document. I just want to read your testimony on  
8 direct, first at page 1792 of the transcript.

9 "Question: Did you have any understanding as to  
10 whether the Desert Gateway shell that Retrophin purchased for  
11 the reverse merger came with any free trading shares?"

12 Your answer was, "No, I wasn't aware."

13 Mr. Brodsky then showed you Defendant's Exhibit  
14 104-14, which is your binder, and can you take that out.

15 THE COURT: For the record, this is in evidence?

16 MS. SMITH: Yes, your Honor.

17 Q This is an e-mail from Mr. Shkreli to yourself dated  
18 December 14, 2012; is that right?

19 A That's correct.

20 Q Does this e-mail say that the Desert Gateway shell that  
21 Retrophin purchased came with freely traded shares?

22 A No, this e-mail does not.

23 Q Does it e-mail discuss the distribution of freely traded  
24 shares from the Desert Gateway shell to other people?

25 A No, the e-mail does not.

S. RICHARDSON - REDIRECT - MS. SMITH

2578

1 Q Does the e-mail explain what Mr. Shkreli meant here by  
2 freely tradeable stock?

3 A No, it does not.

4 Q If you look at the e-mail itself, can you read the first  
5 line?

6 A "Here is a Retrophin purchase agreement should you be  
7 interested, includes wire instructs."

8 Q Does the e-mail attach a document?

9 A Yes, it does.

10 Q Is it a purchase agreement for regular Retrophin stock?

11 A For Retrophin stock, yes.

12 Q If you can read the second line?

13 A Of the e-mail?

14 Q Yes.

15 A "Also if you want freely tradeable stock you can buy  
16 that, we draw up an individual agreement."

17 Q Is it your understanding there would be a different  
18 agreement if you wanted freely tradeable stock?

19 A Yes, from this stock.

20 Q Mr. Shkreli is saying he can make freely stock available,  
21 right?

22 MR. BRODSKY: Objection to the leading.

23 THE COURT: Sustained.

24 Q Who did you understand could make freely tradeable stock  
25 to you, based on this e-mail?

S. RICHARDSON - REDIRECT - MS. SMITH

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1 A The only source I have here is Mr. Shkreli.

2 Q Mr. Brodsky asked you questions on cross-examination  
3 about the bylaws for Retrophin, right?

4 A Yes.

5 Q If we can look at those which are Defendant's Exhibit  
6 104-79. The bylaws start on page ten, there aren't page  
7 numbers, but towards the middle.

8 A Thank you.

9 Q These were the bylaws that you looked at, right?

10 A Yes.

11 Q I actually want to start on page 21, which is page 12 of  
12 the bylaws if you're looking at the numbers on the bottom, the  
13 section indemnification?

14 A Page 12, yes.

15 Q Mr. Brodsky asked you if there was discussion in  
16 December 2013 about indemnification before the bylaws were  
17 approved. Do you remember that discussion?

18 A Yes.

19 Q Mr. Greebel was present for that discussion, correct?

20 A What was the date again?

21 Q The bylaws are from the 2014, and do you remember if  
22 there was a discussion prior to the bylaws?

23 A If it was at a Board meeting?

24 Q Yes.

25 A Yes.

S. RICHARDSON - REDIRECT - MS. SMITH

2580

1 Q Was Mr. Greebel present at that Board meeting?

2 MR. BRODSKY: Can we have a date, your Honor?

3 Q So the bylaws are the end of 2014, I believe Mr. Brodsky  
4 asked you if there was a discussion in December of 2013.

5 THE COURT: About the bylaws?

6 MS. SMITH: About the bylaws before they were  
7 enacted.

8 THE COURT: At a Board meeting.

9 MR. BRODSKY: The bylaws are not in the end of 2014.

10 BY MS. SMITH:

11 Q The bylaws are January 2014, Mr. Brodsky asked about a  
12 discussion at a Board meeting in December 2013.

13 A Yes, I believe a Board call.

14 Q Was Mr. Greebel present on the Board call?

15 A I believe he was.

16 Q During that discussion of the indemnification in December  
17 2013, did Mr. Greebel ever say that he had recently prevented  
18 Retrophin or Mr. Shkreli from being sued by MSMB investors?

19 MR. BRODSKY: Objection to the leading, your Honor.

20 THE COURT: Try to rephrase the question, Ms. Smith.

21 Q Can you explain again what the purpose of the  
22 indemnification is?

23 A Again, it is to protect either the individuals or an  
24 organization against potential litigation effectively.

25 Q And during the Board discussion about potential

S. RICHARDSON - REDIRECT - MS. SMITH

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1 litigation, and the need for the indemnification to protect  
2 against it, did any potential litigation present at that time  
3 come up?

4 A Not at that time.

5 Q Was Mr. Greebel on that call?

6 A Yes, I believe he was.

7 Q Did any discussion of any investigation come up during  
8 that December 2013 call?

9 A Not at that time frame.

10 Q Again was Mr. Greebel on the call?

11 A Yes.

12 Q Let's also look at page nine of the document, the section  
13 about the Secretary and Assistant Secretary?

14 A Yes.

15 Q Who served as Secretary for Retrophin in 2013?

16 A Mr. Greebel was the Acting Secretary.

17 Q What about in 2014?

18 A He continued as the Acting Secretary through I believe  
19 September of 2014.

20 Q Can you read the first sentence of the duties of the  
21 Secretary?

22 A "The Secretary shall attend all meetings of the Board of  
23 Directors and all meetings of the stockholders and record all  
24 the proceedings of the meetings of the corporation and of the  
25 Board of Directors in a book to be kept for that purpose and



S. RICHARDSON - REDIRECT - MS. SMITH

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1 shall perform like duties for the standing committees when  
2 required."

3 Q This sentence says that the Secretary is responsible to  
4 record all proceedings of the meetings of the corporation; is  
5 that right, and of the Board of Directors?

6 A It says, all meetings and record -- yes, record all the  
7 proceedings of the meeting.

8 Q Does it also say that the record will be kept in a book?

9 A Yes.

10 Q Mr. Brodsky asked you questions about Mr. Greebel  
11 providing the minutes to you?

12 A Yes.

13 Q When you asked Mr. Greebel to produce the minutes of the  
14 meetings of the Board of Directors of Retrophin, did he  
15 provide you with a book of minutes?

16 A No.

17 Q Did he ever express to you that it wasn't his  
18 responsibility to keep minutes at the meeting?

19 A Not that I raised it with him, no.

20 Q Did you or the other Board members ever receive copies of  
21 minutes from Board minutes drafted by Mr. Greebel to review?

22 A I believe we received them in September of 2014 as a  
23 batch.

24 Q Did you ever receive them before then?

25 A No, we did not as a Board.

S. RICHARDSON - REDIRECT - MS. SMITH

2583

1 Q Were you ever able to verify whether the information in  
2 the minutes of draft meeting minutes from Mr. Greebel was  
3 accurate?

4 A Not until we received them in September of 2014.

5 Q At that time, did you believe that all of the information  
6 in the Board minutes was accurate?

7 MR. BRODSKY: Objection, your Honor.

8 THE COURT: Sustained. Rephrase.

9 Q Did you review the Board minutes at the time that you  
10 received them in 2014?

11 A Yes, we did.

12 MR. BRODSKY: Objection, your Honor.

13 THE COURT: Overruled.

14 MR. BRODSKY: This is beyond the scope. And there  
15 is no document in evidence, your Honor. I can do it at  
16 sidebar, your Honor.

17 THE COURT: All right. Sorry, ladies and gentlemen.

18 (Continued on the next page.)

19 (Sidebar conference.)  
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## SIDEBAR CONFERENCE

2584

1 MR. BRODSKY: We were prevented from putting in Marc  
2 Panoff, an e-mail from Marc Panoff containing the draft  
3 minutes in December 2013, completely shut us down. Now they  
4 are asking questions about unknown minutes from an unknown  
5 document in September of 2014 with a general question, without  
6 any specificity as to a Board meeting or what specific meeting  
7 or what specific minutes. None of this came out on direct  
8 examination. We had no chance to cross on it. Now they are  
9 introducing this concept after shutting us down from  
10 introducing the actual minutes. And so, it's beyond the scope  
11 of the cross after shutting us down. And it's impermissible  
12 line of questioning.

13 THE COURT: I think that e-mail that you were  
14 offering that wasn't admitted, was an e-mail only to  
15 Mr. Panoff with Board minutes. It didn't go to the entire  
16 Board.

17 MR. BRODSKY: I understand.

18 THE COURT: As I recall and the questions that I'm  
19 hearing here regarding when he as a Board member, received  
20 minutes as the Board. He said as the Board we received the  
21 minutes for the first time in September of 2014. There is no  
22 reason that --

23 MR. BRODSKY: We don't have any document for that.  
24 This is beyond the scope of the cross, because I wasn't  
25 permitted to go into the receipt of Board minutes, and because

## SIDEBAR CONFERENCE

2585

1 they shut that down. And he is generally testifying about  
2 some inaccuracies without us looking at a document or seeing a  
3 document.

4 If they are going to go into this area, your Honor,  
5 I need to be able to go into the Marc Panoff e-mail. There  
6 are other e-mails of Board minutes that Mr. Greebel sent to  
7 Mr. Panoff throughout 2014. And there are notes that were  
8 taken by another person. So starting in October of 2013 David  
9 Kravitz attended Board meetings. He's an attorney at Katten,  
10 other than Mr. Greebel. He was silently on the phone taking  
11 his own notes, producing minutes too and producing the notes.  
12 And so I'm going to have to go into that as well.

13 THE COURT: So Mr. Kravitz was on the phone but  
14 nobody knew it?

15 MR. BRODSKY: Mr. Greebel knew it, but.

16 THE COURT: They doesn't disclose it to anybody.

17 MS. SMITH: It's not in the written Board minutes.

18 MR. BRODSKY: He was -- they didn't want to bill for  
19 time because of the additional time of having another lawyer  
20 on the phone listening.

21 THE COURT: Mr. Kravitz and Mr. Greebel were on, or  
22 Mr. Greebel asked Mr. Kravitz to stand on?

23 MR. BRODSKY: Mr. Kravitz was on the phone and  
24 Mr. Greebel was on the phone. Mr. Kravitz would sometimes  
25 take the notes, sometimes Mr. Greebel.

SIDEBAR CONFERENCE

2586

1 THE COURT: His presence was not disclosed to  
2 anybody?

3 MR. BRODSKY: His presence was on the phone.

4 THE COURT: The minutes don't record?

5 MR. BRODSKY: The minutes don't reflect that.

6 THE COURT: Are you going to have Mr. Kravitz  
7 testify?

8 MR. BRODSKY: We may.

9 MS. SMITH: Then that's fine. Your Honor, I'm  
10 asking this in part because Mr. Brodsky, he asked today about  
11 this disclosure without a document that Mr. Panoff allegedly  
12 made that he had certified that the minutes of the Board of  
13 Directors was true, accurate and correct in January of 2014, I  
14 believe. It was both to, I guess, publicly, or he didn't --  
15 I'm not sure what document specifically he's referring to, as  
16 wells to the underwriters. I need to establish that whatever  
17 minutes, and I'll get to those questions about Mr. Panoff in a  
18 minute, but whatever minutes he eventually received he didn't  
19 have the opportunity to confirm were accurate. I don't need  
20 to go into the specifics of the inaccuracies. I believe that  
21 foundation is laid. But if he's going to say that  
22 Mr. Panoff -- and ask him about it -- certified the minutes  
23 that he had never seen were true, accurate and correct, then I  
24 have a right to ask him what he did say whatever the minutes  
25 were if they were in fact accurate.

SIDEBAR CONFERENCE

2587

1 MR. BRODSKY: I mean, this is a broad question  
2 without specifying what particular.

3 THE COURT: She asked whether he was able to, not  
4 whether specifics minutes were or were not accurate. She  
5 said, were you able to verify on your own whether the minutes  
6 were accurate, so it's a general question.

7 MR. BRODSKY: Understood.

8 THE COURT: Whether he had that opportunity. I  
9 think that what you're getting into, you're not going into in  
10 a granular way into the minutes.

11 MS. SMITH: No. I think at this point I can move  
12 forward. But that is the line that Mr. Brodsky asking about,  
13 some unspecified filing about some unspecified Board minutes  
14 in January of 2014.

15 MR. BRODSKY: All right. They will have to wait and  
16 see for the evidence.

17 MS. SMITH: Okay.

18 THE COURT: Okay.

19 (End of sidebar conference.)

20 (Continued on the next page.)

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25

S. RICHARDSON - REDIRECT - MS. SMITH

2588

1 (In open court.)

2 BY MS. SMITH:

3 Q Mr. Richardson, I was asking you about the Board minutes  
4 that you ultimately received in September of 2014. Prior to  
5 that time, had you had the opportunity to review those Board  
6 minutes for accuracy?

7 A Not prior to that time.

8 Q And when you did receive those Board minutes, were they  
9 an accurate reflection of your memory of what had happened at  
10 those Board meetings?

11 A I recall there were some discrepancies.

12 Q Mr. Brodsky also asked you about whether you were aware  
13 of a declaration that Mr. Panoff had made in January of 2014  
14 about some Board minutes, do you remember those questions?

15 A I remember the questions.

16 Q Did Mr. Panoff check with the Board before certifying any  
17 minutes? Did Mr. Panoff ever check with the Board to certify  
18 whether any minutes were accurate?

19 A No, he did not.

20 Q Was Mr. Panoff present at all Board meetings in 2013?

21 A From the point that he joined the company, yes, I believe  
22 he was.

23 Q What was the point that he joined the company?

24 A June 2013.

25 Q Was he present for any Board meeting prior to June of

S. RICHARDSON - REDIRECT - MS. SMITH

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1 2013?

2 A I don't believe he was, no, because he only joined the  
3 company late, in May is my recollection 2013.

4 Q Would he have been capable of certifying that Board  
5 minutes prior to June 2013 were accurate?

6 A No, he would not have been.

7 Q Mr. Brodsky also asked you questions on cross-examination  
8 about purchasing shares as a Board member. He showed you  
9 Defendant's Exhibit 5756, which is in evidence. If we turn to  
10 the second page and look at the bottom e-mail. If you can  
11 read the second paragraph that Mr. Shkreli said with, "The  
12 good thing"?

13 A "The good thing about insider buying, in my opinion, is  
14 that the stock market usually loves to see directors and  
15 management buy on the open market. So even buying 100 shares  
16 goes a very long way for RTRX. Let me know what you think. I  
17 will be filing some Form 4s shortly."

18 Q What is a Form 4 again?

19 A A confirmation of shares purchased or shares owned.

20 Q What do you do with a Form 4?

21 A It has to be filed with the SEC.

22 Q Is it important to properly disclose the amount of stock  
23 that insiders, like a member of the Board of Directors,  
24 purchased or held?

25 A Yes, it is important.



S. RICHARDSON - REDIRECT - MS. SMITH

2590

1 Q Mr. Brodsky also asked you some questions about someone  
2 named Timothy Pierotti on cross-examination. He showed you  
3 what is marked Defendant's Exhibit 104-72. If we can just  
4 look at the top e-mail.

5 Mr. Brodsky specifically asked you, in the middle  
6 here, if you knew what Mr. Shkreli was talking about when he  
7 talked about, "The Tim thing did not help."

8 A Yes.

9 Q If you understood that to be a reference to Mr. Pierotti?

10 A Yes, Mr. Tim Pierotti.

11 Q On direct you testified in transcript 1991 that  
12 Mr. Shkreli told you that he had given Mr. Pierotti shares  
13 because, quote, "Mr. Pierotti and his family were in strife  
14 having some tough times. When Mr. Shkreli tried to get the  
15 shares, back Mr. Pierotti refused give them back." Do you  
16 remember giving that testimony?

17 A Yes.

18 Q Were those the issues with Mr. Pierotti that Mr. Shkreli  
19 was referencing here?

20 A Yes, I believe they were.

21 Q Mr. Brodsky also asked you some additional questions  
22 about Mr. Pierotti's work on MSMB Consumer. Did you meet  
23 Mr. Pierotti in connection with MSMB Consumer?

24 A Yes, I did, before I chose to invest in it.

25 Q When was that?

S. RICHARDSON - REDIRECT - MS. SMITH

2591

1 A I think it was late 2012.

2 Q For MSMB Consumer?

3 A Consumer, no, must have been -- my apologies, I'm  
4 confused on all the dates on that now.

5 Q Do you remember your testimony on direct examination that  
6 it was in late 2011?

7 A Excuse me, it was further back, yes.

8 Q Does late 2011 sound correct?

9 A Yes. I'm getting my years confused. My apologies.

10 Q You did invest with MSMB Consumer?

11 A Yes, \$50,000.

12 Q What happened with MSMB Consumer?

13 A It operated for about nine or ten months, at that point I  
14 decided to redeem.

15 Q When MSMB consumer wound-down, did you have an  
16 understanding that Mr. Pierotti was working on a venture with  
17 Mr. Biestek?

18 A Yes, he did.

19 Q Were you pitched in investing in that venture?

20 A They raised the subject with me, it didn't get to a  
21 formal pitch, but raised the idea of potentially investing.

22 Q Was it your understanding that that venture was related  
23 to a company in Arkansas?

24 A I know that, yes, I didn't remember the state, but yes.

25 Q Was that company, do you have memory of Dental Gypsum?

S. RICHARDSON - REDIRECT - MS. SMITH

2592

1 MR. BRODSKY: Objection to the lead.

2 THE COURT: Yes. Sustained.

3 Q Do you have an understanding of what that company was  
4 related to?

5 A No, I do not.

6 Q Mr. Brodsky asked you a lot of questions about  
7 Retrophin's financial state in December of 2012 and early  
8 2013. Whether there was a danger in that time frame of  
9 Retrophin no longer being a going concern, do you remember the  
10 question?

11 A Yes.

12 Q How much money was raised in the February 2013 pipe?

13 A In 2013 there were two pipes, one for 10 million and one  
14 for 25 million.

15 Q Prior to that February 2013 pipe, what was Retrophin's  
16 financial state?

17 A It was very low on funds coming into that year.

18 Q So in that early 2013 time period, was \$2 million a lot  
19 of money for Retrophin?

20 A Yes, it was.

21 Q What could Retrophin have done with approximately  
22 \$2 million in that time period with respect to research and  
23 development?

24 A \$2 million for a start-up company is substantial. At  
25 that point in time your research and development into a new

S. RICHARDSON - REDIRECT - MS. SMITH

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1 drug could have been progressed.

2 Q Mr. Brodsky also asked you questions on cross-examination  
3 about what he called Retrophin's books and records, correct?

4 A Yes.

5 Q He also asked about your ability as a Board member to  
6 inspect the books and records?

7 A Yes.

8 Q During the period of time that you were a Board member,  
9 did Retrophin have an attorney?

10 A During the time I was a Board member --

11 Q Who was what the attorney for Retrophin during the time  
12 you were a Board member?

13 A The attorney on counsel was Mr. Greebel.

14 Q Who was the Chief Financial Officer during the time you  
15 that you Board member?

16 A From 2013 mid 2013 on was Mr. Panoff.

17 Q In 2013 did you receive information from Mr. Greebel and  
18 Mr. Panoff at Board meetings about Retrophin's financial  
19 condition and its operations?

20 MR. BRODSKY: Objection, your Honor. Misstates,  
21 mischaracterizes the evidence, your Honor. It's leading.

22 THE COURT: Try to rephrase the question.

23 Q What information did Mr. Panoff and Mr. Greebel bring to  
24 your attention in 2013 when Retrophin's?

25 MR. BRODSKY: Objection to form, your Honor.

S. RICHARDSON - REDIRECT - MS. SMITH

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1 THE COURT: You might have to just ask individual by  
2 individual.

3 Q Starting with Mr. Greebel, did Mr. Greebel bring legal  
4 documents to your attention in 2013?

5 MR. BRODSKY: Objection to the form.

6 THE COURT: Try to rephrase.

7 Q Did Mr. Greebel bring information about legal issues to  
8 your attention in 2013?

9 A Yes, all the respective required company filings, et  
10 cetera.

11 Q Did you have any reason to believe that Mr. Greebel did  
12 not bring information to your attention, that you had to go  
13 ask for it separately?

14 MR. BRODSKY: Objection.

15 THE COURT: Overruled.

16 A No, I did not.

17 Q With respect to Mr. Panoff, what information did  
18 Mr. Panoff bring to Board meetings?

19 A Again all the financial performance data and the  
20 financial filings.

21 Q Did you have any reason to believe that Mr. Panoff did  
22 not bring to your attention information at Board meetings,  
23 that you would need to go and look for yourself?

24 A No, I did not.

25 Q Mr. Brodsky also asked you about the settlement

S. RICHARDSON - REDIRECT - MS. SMITH

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1 agreements?

2 A Yes.

3 Q At one point he asked you whether the settlements were,  
4 quote, "hidden from the Board," do you remember that?

5 A I don't recall the exact words, but.

6 MR. BRODSKY: Objection, your Honor. Mistates my  
7 question.

8 Q Let's look at Government's Exhibit 245, these are the  
9 documents that you received in connection with the  
10 September 9, 2013, Board meeting, or some of the documents?

11 A Yes, September 9, 2013.

12 Q In these materials and also in the materials in  
13 Government's Exhibit 247 there were mentions of settlement  
14 agreements, correct?

15 A Yes, from the external auditors and the revised 10Q.

16 Q Were the parties to the settlement agreements disclosed  
17 in documents?

18 A No, they were not.

19 Q Was the purpose of the settlement agreements disclosed in  
20 those documents?

21 A No, it was not.

22 Q Was it explained to you by Mr. Greebel that the  
23 agreements were used to give money and shares from Retrophin  
24 to MSMB investors?

25 A No, it was not.

S. RICHARDSON - REDIRECT - MS. SMITH

2596

1 Q So while the fact that the settlement agreements existed  
2 was told to the Board, the Board was not told about the  
3 function of the settlement agreements?

4 MR. BRODSKY: Leading.

5 THE COURT: Try to rephrase.

6 Q Was the Board told about the function of the settlement  
7 agreements?

8 A No, it was not.

9 Q Mr. Brodsky asked you on cross about Defendant's Exhibit  
10 2821, which is in your binder, those were your notes related  
11 to September 9, 2013, Board meeting?

12 A 8281?

13 Q 8281, the last document.

14 A Thank you.

15 Q That's again for the record Defense Exhibit 8281 in  
16 evidence.

17 (Continued following page.)

18

19

20

21

22

23

24

25

1 (In open court.)

2 REDIRECT EXAMINATION

3 BY MS. SMITH (continuing):

4 Q So that's, again, for the record, Defense Exhibit 8281 in  
5 evidence.

6 There is a notation next to line item ten, that  
7 says, Augments D and O.

8 A Yes.

9 Q Which Mr. Brodsky asked you about.

10 A Yes.

11 Q As you sit here today, do you remember whether or not  
12 this line item was discussed at the board meeting?

13 A No, I did not recall it being discussed at the meeting.

14 Q With respect to line item nine, did the board discuss or  
15 approve the consulting agreements mentioned in line item nine?

16 A Not item nine, no.

17 Q We talked about your notes for the board meetings.

18 Were the notes on this document written at the time  
19 of the board meeting or before the board meeting?

20 A The majority of them were written -- the majority were  
21 written before.

22 Q The items related to item number nine, it says minimum  
23 time expectations and cost structures, were those written  
24 before the meeting or during the meeting?

25 A I written them to myself ahead of the meeting, hence the



1 question marks.

2 Q What were those comments based on?

3 A Those comments were based on the fact that, again, for  
4 any consultant agreements we would look at, to understand what  
5 is the minimum time expectation we have with that potential  
6 consultant and also to understand any other costs related to  
7 any agreement.

8 Q Let's take a quick look at the draft consulting agreement  
9 that you received in connection with that board meeting, which  
10 is Government Exhibit 245. Then, it's page 38 of the pdf.

11 Again, in the top right-hand corner, what's written  
12 in?

13 A Katten draft, 20th of August '13.

14 Q Based on your review of this draft consulting agreement,  
15 does it indicate that Mr. Geller was an investor in MSMB  
16 Healthcare?

17 A Again, I never reviewed these in detail. I never  
18 reviewed this agreement in detail. So I don't know if it was  
19 referenced or not.

20 Q Did Mr. Greebel ever inform you that Mr. Geller was an  
21 investor in MSMB Healthcare?

22 A No, he did not.

23 Q Were you ever informed of the purpose of the consulting  
24 agreement?

25 A No.

Richardson - Redirect/Smith

2599

1 Q Mr. Brodsky also asked you on cross-examination whether  
2 Mr. Panoff ever brought to the board's attention any concerns  
3 he had with Mr. Shkreli; and I believe he asked you about --  
4 you said there were two instance where Mr. Panoff raised  
5 concerns; is that right?

6 A I believe in the context of the business development  
7 trading and stock issue.

8 Q Did Mr. Panoff ever express any concerns to you about the  
9 settlement agreement?

10 A No, he did not.

11 Q If Mr. Panoff, as the chief financial officer, had  
12 concerns about the settlement agreement or consulting  
13 agreement, would you have expected him to raise those with the  
14 board?

15 MR. BRODSKY: Objection, Your Honor. Assumes and  
16 form.

17 THE COURT: Try to rephrase, Ms. Smith.

18 Q What was your expectation for Mr. Panoff about raising  
19 concerns with the board?

20 MR. BRODSKY: Objection, Your Honor.

21 THE COURT: Well, why don't we wait until she  
22 finishes the question. I think she was midway through it.

23 Try to rephrase based on our sidebar, if you could,  
24 please.

25 MS. SMITH: Sure.

Richardson - Redirect/Smith

2600

1 Q What, if anything, did you believe were Mr. Panoff's  
2 responsibilities as the chief financial officer at board  
3 meetings?

4 A Certainly one of them was to be an independent voice and  
5 to speak out if there were any concerns.

6 Q Mr. Brodsky also asked you on cross-examination about  
7 Mr. Shkreli's employment agreement, correct?

8 A Yes.

9 Q And you were also shown an e-mail, which is Defense  
10 Exhibit 8983R.

11 A Yes.

12 Q So before we get to the document, who did you receive the  
13 draft of Mr. Shkreli's employment agreement from?

14 A From Mr. Greebel.

15 Q Who did you provide comments to about the employment  
16 agreement?

17 A Back to Mr. Greebel.

18 Q Did you communicate with any other attorney regarding the  
19 employment agreement?

20 A No, I did not.

21 Q And on direct, I believe, you testified that you focused  
22 on the compensation sections of the employment agreement.

23 A Yes, and the omission of any political activity was the  
24 second subject.

25 Q That's reflected in this e-mail here, which is Defense

1 Exhibit 8983R?

2 A Yes. That's my e-mail to Mr. Greebel.

3 Q For the political activities, what made you ask about  
4 that?

5 A Again, Mr. Shkreli had been active on Twitter and forums,  
6 social media forums; and I felt it was appropriate --  
7 important that we had some rules, if you like, about what was  
8 appropriate for a CEO.

9 Q Was there a heading in the employment agreement about  
10 political activity?

11 A No, which is why I flagged it. It was a heading that I  
12 wanted to see.

13 Q Was one of the comments you provided here the specific  
14 comment about bonus related to compensation?

15 A Yes, it is.

16 Q And on cross, Mr. Brodsky walked you through the language  
17 of the employment agreement, asked you if it was standard or  
18 boilerplate.

19 A Yes.

20 Q And what was your understanding of whether the majority  
21 of the language in the employment agreement was standard or  
22 boilerplate?

23 A When I first reviewed it, just looking at the headings, I  
24 believed most of it was boilerplate and standard.

25 Q Did Mr. Greebel highlight for you any language that was

1 not boilerplate or standard?

2 A No, he did not.

3 Q And the termination provision that we have discussed, did  
4 Mr. Greebel ever highlight for you or the other board members  
5 that that provision stated that Mr. Shkreli could only be  
6 terminated if he was convicted of a felony?

7 A No, he did not draw attention to it.

8 Q In all of your years of experience in human resources,  
9 have you ever seen or heard of such a provision?

10 MR. BRODSKY: Objection.

11 THE COURT: Overruled.

12 A No, I have not.

13 Q Mr. Brodsky also asked you about the SEC investigation,  
14 on cross-examination.

15 A Yes.

16 Q And you had a conversation with Mr. Greebel in March of  
17 2014, before you went into the SEC interview; is that right?

18 A That's correct.

19 Q What did Mr. Greebel tell you during that conversation  
20 about the nature of the SEC investigation?

21 A He had said that he believed it was based on a  
22 disgruntled employee, but it related solely to MSMB.

23 Q When you met with the SEC, you testified that there were  
24 references to Retrophin, correct?

25 A Yes. There were a couple of references to Retrophin.

Richardson - Redirect/Smith

2603

1 Q Were you asked questions about Retrophin?

2 A No.

3 Q Do you remember all of the topics related to Retrophin  
4 that you were asked about during that meeting?

5 A No, I do not remember the detail at this point.

6 Q Okay. If I can show you what's been marked as Government  
7 Exhibit 3500-SR-1-1, which is in your binder, if you can just  
8 take a moment and read, there is a section called Retrophin,  
9 pages 3 and 4, briefly.

10 A Yes.

11 Q Putting that document aside, does that refresh your  
12 recollection that during the SEC interview you were asked  
13 about your work as a catalyst for Retrophin?

14 A Yes. I recall talking about how Retrophin was set up and  
15 how I played a role in that.

16 Q Does that refresh your recollection that during the SEC  
17 interview you were asked about the Valeant deal at Retrophin?

18 A Yes, I do, yes.

19 Q Does it refresh your recollection that during the SEC  
20 interview you were asked about the valuation of Retrophin?

21 A Yes. That piece I did recall, how the pricing had been  
22 set.

23 Q When you spoke to Mr. Greebel in the conversation before  
24 the interview, did he tell you that the SEC had previously  
25 asked questions about Retrophin?

1 MR. BRODSKY: Objection, Your Honor.

2 THE COURT: Try to rephrase the question, please.

3 Q When you spoke to Mr. Greebel in the SEC -- in the  
4 meeting you had with him or the call you had with him before  
5 the SEC interview, what, if anything, did he mention regarding  
6 Retrophin?

7 A No. My understanding from that conversation, that it  
8 didn't involve Retrophin whatsoever.

9 Q Did Mr. Greebel tell you that Retrophin had ever come up  
10 in the context of the SEC investigation previously?

11 MR. BRODSKY: Objection to the leading.

12 THE COURT: Overruled. You may answer.

13 A No, he did not.

14 Q Way back at the very beginning of your cross-examination,  
15 last Wednesday, you were asked whether Mr. Shkreli was removed  
16 as CEO in September of 2014 because of the settlement and  
17 consulting agreements.

18 At the time that Mr. Shkreli was removed as CEO in  
19 September of 2014, had Mr. Greebel told you that investors in  
20 Mr. Shkreli's hedge funds had complained about their  
21 investments being converted into Retrophin shares?

22 MR. BRODSKY: Objection, objection.

23 THE COURT: Just rephrase the question, what if  
24 anything.

25 Q What, if anything, had Mr. Greebel told you about the

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2605

1 settlement and consulting agreements at the time that

2 Mr. Shkreli was removed as CEO in September of 2014?

3 A There was no further information supplied by Mr. Greebel.

4 Q So at the time that Mr. Shkreli was removed as CEO in  
5 September of 2013, were you aware of any issues with the  
6 settlement or consulting agreement?

7 A September '14.

8 Q September of 2014.

9 A No, I wasn't aware.

10 MS. SMITH: Just one moment.

11 (Pause.)

12 MS. SMITH: Your Honor, no further questions.

13 THE COURT: All right. Some recross?

14 MR. BRODSKY: Yes, Your Honor.

15 RECROSS-EXAMINATION

16 BY MR. BRODSKY:

17 Q Mr. Richardson, might you be mistaken regarding when you  
18 first learned there was an SEC filing that had your incorrect,  
19 according to you, stock ownership?

20 You testified on redirect examination that you first  
21 learned about it in connection with a document from  
22 Mr. Greebel relating to a Form S-1. Might you be mistaken  
23 that you learned about a filing that you made to the SEC in  
24 December of 2012 that contained your ownership of Retrophin  
25 stock?



KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2606

1 A I believe it was the stock transfer. The stock transfer,  
2 which was immediately ahead. When I got the stock -- excuse  
3 me -- the stock certificate, I should say. The stock  
4 certificate, when that was issued.

5 Q You saw the government show you an exhibit from March of  
6 2013 relating to a Form S-1, correct?

7 A Yes.

8 Q And you testified just a few minutes ago that that's what  
9 prompted you to realize that the amount of stock reported --  
10 to be reported was inaccurate, right?

11 A That -- I believe that was triggered by the stock  
12 certificate.

13 Q When was the stock certificate given to you?

14 A I don't recall.

15 Q It was triggered by a stock certificate that you received  
16 in the mail?

17 A No. Notification from Mr. Shkreli that the stock  
18 certificate was available to look at or access.

19 Q Shortly before March of 2013?

20 A I believe, yes. I believe.

21 MR. BRODSKY: Well, may I approach, Your Honor?

22 THE COURT: Yes.

23 Q Let's see if we can refresh your recollection,  
24 Mr. Richardson. I'm showing you Defense Exhibit 104-107 for  
25 identification. If you would take a moment to look at this

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2607

1 SEC Form 3 filing, dated in the bottom right December 30,  
2 2013.

3 This was filed in December 2013, correct?

4 A Yes, 30th of December.

5 Q Do you not, in connection with December of 2012, see the  
6 Form 8-K? Do you know what I mean by the Form 8-K?

7 A The Form 8-K submission?

8 Q In connection with reverse merger.

9 A Yes.

10 MR. BRODSKY: I believe that's in evidence. Can we  
11 have that in evidence. It's DX 104-97. I just want to check  
12 if it's in evidence before we show it to you. Yes. Can we  
13 put up DX 104-97.

14 Q So I just showed you a Form 3 filed in December of 2013,  
15 correct, Mr. Richardson?

16 A Yes.

17 Q Okay. One year prior -- let me show you what we are  
18 putting up on the board.

19 One year prior there is a Form 8-K, from DX 104-97.  
20 This was filed in December of 2012, correct?

21 Are you aware of this filing?

22 A This is the one on the screen, counsel?

23 Q Yes. Are you familiar with this?

24 A Again, I'm not familiar with the detail of it at this  
25 point, but I know what it is, yes. It is the 8-K submission.

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2608

1 Q You know it was filed in December of 2012?

2 A 2012, yes.

3 Q You received a copy of it.

4 It's the first public filing relating to Retrophin  
5 as a public company?

6 A I believe I received a copy. I'm not sure, but I believe  
7 I would have done.

8 Q You were on the board of directors of Retrophin when  
9 Retrophin went public.

10 Wouldn't you have received a public copy?

11 A I would have thought so, yes.

12 Q Of course. There is a description of your background in  
13 there, right?

14 A In this one, yes.

15 Q Let me show you page 68 of 81, and I will give you the  
16 hard copy.

17 If we can go to page 68 of 81 on this December 2012  
18 filing, does it not have, if we scroll, Mr. Richardson's name,  
19 your stock ownership of 98,055 shares?

20 A Yes.

21 Q A one percent ownership of the company?

22 A Yes.

23 Q So by December 18, 2012 you knew your stock ownership  
24 publicly filed was, according to you, inaccurate?

25 A No. At this point, of course, we weren't publicly

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2609

1 trading. So I didn't have the stock price to see the  
2 valuation.

3 Q When you went public on December 12, 2012 through a  
4 reverse merger you became a public company, correct?

5 A Yes.

6 Q And you went public, your stock was available for sale,  
7 correct?

8 A Yes.

9 Q So December 18, when this is filed with the SEC, for all  
10 the world to see, your stock ownership, according to you, was  
11 inaccurate?

12 A I don't recall at what point I did the multiply to see  
13 what the stock value was. It wasn't immediately there.

14 Q But you testified a few minutes ago that you first  
15 learned about it from a Form S-1, correct?

16 A Yes.

17 Q Isn't your recollection mistaken?

18 A No. I could have at this point done the calculation, but  
19 I don't know at what point through the year end -- I don't  
20 know at what point I did the calculation.

21 Q You could have seen this?

22 A No. I couldn't have done the calculation of what this  
23 equated to in terms of dollars.

24 Q It says --

25 A It's in terms of shares.

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2610

1 Q It's telling you it's a one percent ownership with 99,000  
2 shares -- 98,000.

3 A Yes.

4 Q There is confusion about the amount of shares there?

5 A No, no; but, again, in my discussions with Mr. Shkreli,  
6 he has taken me the five percent at some point. It wasn't  
7 immediate at this point.

8 Q Your testimony now is that after going public at some  
9 point, but not right away, you were going to get the five-plus  
10 percent; is that what you are saying now?

11 A No, the original discussion with Mr. Shkreli, back to the  
12 capitalization table.

13 Q The original discussion about the cap table was in  
14 November of 2012, sir.

15 A Yes. This is December. So in November he said I will  
16 get you the five percent over time.

17 Q Now it's over time?

18 A Yes.

19 Q So all the e-mails that you had in January, March, and  
20 continuously in 2013, was you asking for the shares over time,  
21 not for anything right away?

22 A Two separate pieces, remember, a piece coming from the  
23 company and then the second piece, which is the true-ups,  
24 which Mr. Shkreli asked me during March to go to the back of  
25 the line.

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2611

1 Q I will move on, Mr. Richardson.

2 Let's put up Government Exhibit 305. That was just  
3 shown to you this morning.

4 MR. BRODSKY: Can we have that? We don't have it?  
5 Would the government put up Government Exhibit 305? Do you  
6 have an extra copy of 305?

7 MS. SMITH: Yes.

8 MR. BRODSKY: Thank you. Now, well, we will do it  
9 without the ELMO. Here we go. My kids tell me I'm  
10 electronically incapable.

11 BY MR. BRODSKY:

12 Q This is the document you were shown where March 12, 2013,  
13 Mr. Keun Dong Kim sends you an e-mail saying this is your S-1,  
14 right, Form S-1 going to be filed?

15 A Yes.

16 Q Then you respond and say, Keun Kim, the details of my  
17 share ownership are not accurate. Mark S. is looking into it.  
18 I assume that needs to be corrected, right?

19 A Yes.

20 Q Did you think of copying and pasting all the details that  
21 you wrote out in the e-mail to Mr. Shkreli and putting it in  
22 this e-mail?

23 A Not at this point I didn't.

24 Q Did you provide anywhere in this document an explanation  
25 of the details relating to your reconciliation?

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2612

1 A Well, I believe there were two tracks of communication  
2 here, the tracks I had with Mr. Shkreli and the tracks that we  
3 are looking at here with associates, initially associates at  
4 Katten.

5 Q Let's look at the track with the Katten people,  
6 Mr. Greebel, and Keun Kim. That's the track I want to talk  
7 about right now.

8 A Right.

9 Q Where in here does it say anything with respect to your  
10 outline of the reconciliation that you gave to Mr. Shkreli?

11 A I didn't attach anything to this gentleman here until --  
12 I didn't know this associate, Mr. Keun Kim.

13 Q I understand, but in the e-mail at the top, where it says  
14 8:31 p.m., Martin has owed me for some time now a clear  
15 reconciliation of my investment. The numbers in your filing  
16 significantly understates my share ownership.

17 Mr. Greebel is on the e-mail. Why didn't you just  
18 copy -- you didn't copy and paste your detailed reconciliation  
19 and your arrangement with Mr. Shkreli into this e-mail, right?

20 A No, because this is where the second stream is important,  
21 because Mr. Shkreli has said I'm discussing this with  
22 Mr. Greebel.

23 Q You relied on Mr. Shkreli to pass along the information  
24 about your arrangement to Mr. Greebel, correct?

25 A Certainly at this point in the communication, yes.

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2613

1 Q Correct. And it doesn't say anything here about MSMB,  
2 right, no mention?

3 A Not in this communication.

4 Q It doesn't say anything in this communication that the  
5 government showed you, Government Exhibit 305 in evidence,  
6 about your November 2012 founder's cap table, right?

7 A No, there is no reference to that here.

8 Q There is no reference to the amount of shares that you  
9 are expecting to get from Mr. Shkreli and the company,  
10 correct?

11 MS. SMITH: Your Honor, asked and answered.

12 THE COURT: Okay. Move on, Mr. Brodsky.

13 MR. BRODSKY: Sure. I think the point has been  
14 made. Thank you, Your Honor.

15 Q Let me ask you with respect to Defense Exhibit 104-252.

16 MR. BRODSKY: If we can put that on the board. I  
17 can't shut it down. Are you able to put it on without  
18 shutting it down?

19 THE CLERK: Are you --

20 THE COURT: Which one are you using?

21 MR. BRODSKY: I'm just going to use the board now.

22 THE COURT: The computer? Yes, okay. We just got  
23 confused.

24 MR. BRODSKY: Okay. I thought it was me.  
25



KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2614

1 BY MR. BRODSKY:

2 Q In this e-mail exchange -- let's go back to it -- you  
3 were asked some questions on redirect with respect to this  
4 e-mail exchange. I just want to ask you a few questions.

5 When Mr. -- when Mr. Greebel says, Martin is going  
6 to give you an option to buy 125,000 shares from him, do you  
7 see that?

8 A Yes.

9 Q That's a purchase, correct?

10 A Yes.

11 Q That would require a purchase agreement, right?

12 A Yes.

13 Q And the idea there would be that Mr. Shkreli would give  
14 you a purchase agreement where you would be buying at some  
15 price, right?

16 A Yes.

17 Q 125,000 shares?

18 A Yes.

19 Q And that would require board approval, of course,  
20 correct?

21 MS. SMITH: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q Put aside whether it would require board approval.

24 It would require a purchase agreement, correct?

25 A Between myself and Mr. Shkreli.

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2615

1 Q Was there a purchase agreement at this time in March 18,  
2 2013?

3 A At this time it wasn't. It was asked for later.

4 Q Understood, but at this time in your track of  
5 communications, which just involved Mr. Shkreli -- remember  
6 the two tracks just with Mr. Shkreli and then with Mr. Greebel  
7 and Keun Kim at Katten?

8 A Yes.

9 Q I'm talking about the track with Mr. Shkreli.

10 You weren't talking about a purchase agreement with  
11 Mr. Shkreli, correct; you were talking about getting  
12 approximately 100 to 125,000 shares gifted to you from  
13 Mr. Shkreli and Marek Biestek, right?

14 A I don't recall. The phraseology was never captured as to  
15 how the transfer would be handled.

16 Q It certainly was never referred to as a purchase, right?

17 A I don't remember the language, the exact language. It  
18 moved a number of times from Mr. Shkreli.

19 MR. BRODSKY: Well, let's put up Government  
20 Exhibit 236.

21 Q Let's scroll down to your reconciliation, March 14, 2013,  
22 10:57 a.m. Scroll down a little bit more.

23 That's your reconciliation, right?

24 A Yes, it is.

25 Q I will give you my copy.

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Richardson - Recross/Brodsky

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1 A No, I can see it on here.

2 Q I'm going to give you the whole copy.

3 Point to any language in here that says purchase.

4 Anything that refers to purchase, references purchase, alludes  
5 to a purchase.

6 A No, but again, remember, the communication had said I  
7 need to speak to Mr. Greebel about how this can be handled.

8 Q Understood.

9 A So I'm understanding that that's going to be resolved and  
10 come back to me.

11 Q Understood. Let me move on, Mr. Richardson.

12 We were looking at -- the government asked you a few  
13 questions on the bylaws, correct?

14 A Yes.

15 Q And then they asked you, in sum and substance, whether or  
16 not in December of 2013 when there was a board call relating  
17 to indemnification, do you remember those questions and giving  
18 the answers?

19 A Yes.

20 Q Now, if the MSMB investors who had converted their shares  
21 into Retrophin stock had settled their cases -- withdrawn.

22 You learned about settlements, correct?

23 MS. SMITH: Objection, Your Honor.

24 THE COURT: Sustained. Rephrase.

25 MR. BRODSKY: Got it.

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2617

1 Q By -- in July 2nd, 2000 -- July 3rd, 2013, in the summary  
2 cash flow, with your arrow drawn to it, it said MSMB  
3 settlements, right?

4 A Yes. The heading was MSMB settlements in July. I didn't  
5 understand settlement agreements until the auditor's letter of  
6 September.

7 MS. SMITH: I'm objecting to beyond the scope of  
8 redirect.

9 THE COURT: All right.

10 MR. BRODSKY: This is squarely within the scope,  
11 Your Honor. I'm leading up to December of 2013 and asking  
12 him.

13 THE COURT: Move on to December of 2013, please.

14 MR. BRODSKY: Yes, but I need to lay the foundation  
15 for it first. They were asked whether Mr. Greebel said  
16 anything about settlements.

17 THE COURT: At the board meeting in December 2013?

18 MR. BRODSKY: In December 2013. So I have to lay  
19 the foundation.

20 THE COURT: All right. Let's go.

21 BY MR. BRODSKY:

22 Q Mr. Richardson, you learned there were settlements from  
23 Marcum at least by September 9, 2013, right?

24 A September 9, yes, that board meeting.

25 Q These are settlements that have taken place already,

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1 correct?

2 A Yes, already booked.

3 Q And your understanding of settlements is that the parties  
4 have resolved their potential dispute, correct?

5 A Yeah.

6 Q That's the concept of a settlement?

7 A Yes.

8 MS. SMITH: Objection, Your Honor.

9 THE COURT: So, rephrase.

10 Q The concept of a settlement is where parties in a dispute  
11 settle their dispute, correct?

12 A Yes, that's the intent.

13 Q When there is a settlement there is no longer a dispute  
14 between them, right?

15 A That would be the -- that would certainly be the  
16 expectation.

17 Q So in December of 2013, during a board meeting about  
18 indemnification, you certainly didn't expect Mr. Greebel or  
19 anyone from Katten to raise with you matters that were  
20 resolved already, correct?

21 A If there were no open issues, no.

22 Q Now, you were asked about Marc Panoff and you were asked  
23 about minutes. You were also asked about a discrepancy in  
24 your recollection relating to minutes.

25 Do you remember that?

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Richardson - Recross/Brodsky

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1 A Yes.

2 Q With respect to September 2014?

3 A Yes.

4 Q Is it fair to say, based upon your direct examination and  
5 cross-examination, that your recollection of what took place  
6 at the board meetings is not perfect?

7 A I can't claim it's perfect.

8 Q In fact, you don't recall certain things that did happen,  
9 correct?

10 MS. SMITH: Objection, Your Honor.

11 THE COURT: Sustained. Rephrase.

12 Q Do you recall during cross-examination being refreshed  
13 about things that took place during board meetings that you  
14 had forgotten?

15 MS. SMITH: Objection, Your Honor.

16 THE COURT: Sustained.

17 Q Do you recall in the last few days remembering things  
18 that you had forgotten relating to board meetings?

19 A There was certainly one or two instances.

20 Q Now, you testified that you believed Mr. Panoff joined in  
21 May 2015.

22 A '13.

23 Q 2013. Is your recollection a little mistaken? Could it  
24 have been earlier in May and not late May 2013?

25 A I don't remember the exact date that he did, but I know

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

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1 it was in May. The official announcement was sometime in May.

2 Q You testified about acting secretary, right, do you  
3 remember?

4 A Yes, Mr. Greebel.

5 Q You saw the Form 14, the proxy statement, that went out  
6 to all stockholders of the company prior to the stockholder  
7 meeting in May of 2014?

8 A Yes.

9 Q We talked about it, we saw it on the board, correct?

10 A Yes.

11 Q Was Mr. Greebel mentioned anywhere in there as acting  
12 secretary?

13 A No, because he was not an employee.

14 Q Because he was not an officer, correct?

15 A Not an officer.

16 Q And he was not a director?

17 A No, he wasn't a director.

18 Q You were asked some questions about Tim Pierotti on  
19 redirect, redirect examination; and I just want to talk about  
20 that.

21 You, given your close friendship with Mr. Shkreli,  
22 you learned about the dispute between Mr. Shkreli and  
23 Mr. Pierotti by late 2012, correct?

24 MS. SMITH: Objection, Your Honor.

25 THE COURT: Please rephrase.

KOCHER - RECROSS - BRODSKY  
Richardson - Recross/Brodsky

2621

1 Q You learned about a dispute between Mr. Shkreli and  
2 Mr. Pierotti, correct?

3 A I learned about a dispute, but the details didn't come  
4 out until 2014.

5 Q You had multiple dinners with Mr. Shkreli between late  
6 2012 through 2013, right?

7 A Yes.

8 Q And, in fact, in December of 2013 doesn't Mr. Shkreli  
9 e-mail you and talk about how Mr. Pierotti was saying bad  
10 things to a newspaper reporter about him?

11 A I do remember, yeah, there was certainly a dispute going  
12 on. I knew earlier, but we didn't get the details until the  
13 board meeting in 2014.

14 Q But you had multiple dinners, correct, with Mr. Shkreli  
15 from late 2012 through late 2013, right?

16 A Yes.

17 Q And you saw him, he trusted you, correct?

18 A Yes.

19 Q And you trusted him, right?

20 A Yes.

21 Q And isn't it a fact that he discussed with you his  
22 dispute with Mr. Pierotti during those dinners?

23 A I certainly don't recall a detailed discussion. I  
24 remember him referencing he was in dispute on some issues, but  
25 he never shared the details until 2014.



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Richardson - Recross/Brodsky

2622

1 Q Did you ever get a copy of the complaint that Retrophin  
2 filed -- Retrophin, not Mr. Shkreli -- that Retrophin filed  
3 against Mr. Pierotti in 2013?

4 A I only remember the detail coming when Mr. Greebel gave  
5 us litigation updates. I don't remember it before that.

6 Q Let me see if I can refresh your recollection. Let me  
7 show you Defense Exhibit 104-217 for identification.

8 If you would take a moment to look at that and see  
9 if it refreshes your recollection of a complaint that  
10 Retrophin filed against Mr. Pierotti in 2013.

11 A No, I don't recall seeing this document.

12 Q Did you know in 2013 that Retrophin filed a public  
13 complaint in New York Supreme Court of the State of New York,  
14 County of New York, against Mr. Pierotti?

15 A I don't recall it being flagged in any of our board  
16 updates in '13.

17 Q And you understood that complaints filed in the Supreme  
18 Court of the State of New York are public, correct?

19 MS. SMITH: Objection, Your Honor. Beyond the  
20 scope.

21 THE COURT: Sustained.

22 Q Now, can you take a look at the first paragraph and read  
23 it silently to yourself.

24 MS. SMITH: Objection, Your Honor.

25 THE COURT: Sir, the complaint is beyond the scope

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1 of redirect.

2 MS. SMITH: He says he doesn't remember it.

3 THE COURT: What has he stated he doesn't remember  
4 in order to allow you to refresh?

5 MR. BRODSKY: He doesn't remember updates in 2013  
6 with respect to the complaint. So I'm showing him the  
7 complaint, to try to refresh his recollection.

8 MS. SMITH: Asked and answered, Your Honor.

9 MR. BRODSKY: I can show a witness any document to  
10 refresh their recollection.

11 THE COURT: Does this refresh your recollection  
12 about Mr. Brodsky's question regarding the dispute or a  
13 dispute with Mr. Pierotti?

14 THE WITNESS: No, judge. I don't believe I ever  
15 received or saw this document.

16 BY MR. BRODSKY:

17 Q Even though, Mr. Richardson, you haven't seen it or you  
18 haven't seen it before, I would like you to read silently to  
19 yourself -- it's not in evidence; it's just to refresh your  
20 recollection -- I would like you to read the first paragraph  
21 to yourself. You can put it down now.

22 Does it refresh your recollection, Mr. Richardson,  
23 that you actually received an update at a board meeting in  
24 2014?

25 MS. SMITH: Objection, Your Honor. He already said

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1 that he received an update.

2 THE COURT: Sustained. The dates, I don't know if  
3 you are mistaken about dates.

4 MR. BRODSKY: Oh, I apologize. I will ask about  
5 2013 and then I will ask about 2014.

6 THE COURT: So ask the date that you really mean.

7 MR. BRODSKY: I won't ask about 2014, but I will now  
8 drop to 2013.

9 Q 2013, does this refresh your recollection, sir, that in  
10 connection with a dispute with Mr. Pierotti, Mr. Shkreli  
11 shared with you information about the nature of the dispute?

12 A No, I do not recall this detail until Mr. Greebel's  
13 update in 2014.

14 Q And Mr. Greebel's update, didn't the update from  
15 Mr. Greebel -- and Mr. Greebel was there with a partner from  
16 Katten, a colleague, correct?

17 A Yes, in May of 2014, if I recall.

18 Q Can I ask you if it refreshes your recollection to look  
19 at the signature page of the people who filed this complaint,  
20 in DX 104-217, page 19 of the complaint. The Bates number is  
21 Pierotti 191.

22 Do you see the names there?

23 A Yes.

24 Q And just read the names silently to yourself. Okay.

25 A Yes.

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1 Q Does it refresh your recollection that the colleague who  
2 was with Mr. Greebel at the board meeting in 2014 was Michael  
3 Gordon?

4 MS. SMITH: Objection, Your Honor.

5 THE COURT: Overruled. Does it refresh your  
6 recollection?

7 THE WITNESS: So I'm just confused. This says  
8 Mr. -- oh, I see here. There are two names here. I just saw  
9 Mr. Cotton. No, it doesn't refresh the name. I know there  
10 was another partner or associate with Mr. Greebel. I don't  
11 remember the name.

12 Q Okay. And you could put down the complaint,  
13 Mr. Richardson.

14 So you did come to learn that two litigation  
15 partners at Katten, Howard Cotton and Michael Gordon, not  
16 Mr. Greebel, were handling the litigation against  
17 Mr. Pierotti, correct?

18 A Mr. Greebel had referenced that, but I think most updates  
19 came only from Mr. Greebel in the May meeting in the Katten  
20 offices, where this other colleague was with him.

21 THE COURT: May of what year?

22 THE WITNESS: May of 2014, judge.

23 Q During that May 2014, did you have an understanding that  
24 the colleague who was sitting next to Mr. Greebel during that  
25 board meeting was the litigation partner at Katten who was

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1 handling the litigation?

2 MS. SMITH: Objection, Your Honor. It's beyond the  
3 scope.

4 THE COURT: All right.

5 MR. BRODSKY: This witness --

6 THE COURT: I will allow the answer, and then we are  
7 going to move on because we are touching on matters that  
8 weren't touched on in redirect. This is the last question on  
9 the subject.

10 A Yes. I did know that there was a litigation partner  
11 working with him. I didn't know the scope of their respective  
12 work.

13 Q And during that meeting, because this did come out during  
14 redirect -- redirect, you made some statements about what  
15 information you received at that board meeting, right?  
16 Weren't you asked about what information you received at that  
17 board meeting during redirect about Mr. Pierotti?

18 A About Mr. Pierotti, yes, yes.

19 Q Yes. All right. I want to ask you about that.

20 Might your recollection be mistaken about what  
21 information Mr. Greebel updated you relating to the litigation  
22 against Mr. Pierotti?

23 MS. SMITH: Objection, Your Honor.

24 THE COURT: Sustained.

25 Q Isn't it a fact that Mr. Greebel, sitting next to another

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1 partner at Katten, provided you with an update that it wasn't  
2 Martin Shkreli who had given shares to Mr. Pierotti, but  
3 rather Mr. Pierotti had purchased shares at a discounted price  
4 and then refused to go to Retrophin and work and help build  
5 Retrophin?

6 MS. SMITH: Objection, Your Honor.

7 THE COURT: Sustained.

8 Q Isn't it the case that Mr. Greebel informed the board in  
9 May of 2014 that the Pierotti litigation was about  
10 Mr. Pierotti having purchased shares in exchange for a  
11 commitment to work for the company?

12 A No, I do not remember the reference to purchase.

13 Q And it's your testimony that the partner who was sitting  
14 with Mr. Greebel didn't say anything during the board meeting,  
15 correct?

16 A No. I believe he talked -- on this -- during the  
17 litigation update Mr. Greebel spoke, the other colleague spoke  
18 on some subjects, and then Mr. Shkreli spoke on some subjects  
19 as well.

20 Q Thank you. Now, let's turn to, for a moment, to your  
21 testimony that Mr. Greebel was the attorney for the company.

22 A Counsel.

23 Q Do you understand there were other partners at Katten who  
24 did work for the company, right?

25 A Yes.

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1 Q You understand, for example, that Michael Gordon --  
2 withdrawn -- Michael Rosensaft represented -- well, withdrawn.

3 You understand that Howard Cotton represented  
4 Retrophin in connection with litigation against Mr. Pierotti?

5 MS. SMITH: Objection, Your Honor.

6 THE COURT: You know what, maybe what we should do  
7 at this point is you can rephrase your question. We will give  
8 the jurors a break. I think they would like one now.

9 Please don't talk about the case. When we resume  
10 you can present your question. Thank you.

11 (Jury exits.)

12 THE COURT: All right. Ten minutes.

13 (Recess.)  
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20  
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23  
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1 THE COURT: All right, have a seat.

2 Is everybody ready to resume?

3 MR. BRODSKY: Yes.

4 THE COURT: All right, let's get Mr. Richardson in  
5 and we'll get the jury.

6 (Whereupon, the witness resumes the stand.)

7 (Jury enters the courtroom.)

8 THE COURT: All right. Now, all the jurors are  
9 back. Thank you.

10 Mr. Brodsky, you can continue with your cross.

11 MR. BRODSKY: Thank you, Your Honor.

12 CROSS-EXAMINATION (Continued)

13 BY MR. BRODSKY:

14 Q Mr. Richardson, just briefly where we left off. You knew  
15 there were other partners in Katten working on legal matters  
16 for Retrophin, correct?

17 A Yes.

18 Q And did you know some of those partners had seniority to  
19 Mr. Greebel at Katten, the law firm?

20 A I didn't know that with respect to the titles.

21 Q You were asked some questions on redirect examination  
22 about the settlements, correct?

23 A Yes.

24 Q You were asked questions about whether or not anybody  
25 identified the parties to the settlements, right, or the



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1 purpose of the settlements, correct?

2 A Yes.

3 Q You knew MSMB investors were seeking true-ups for their  
4 Retrophin shares, right?

5 A Yes, I did.

6 Q You knew some of them were the ones who had reached  
7 settlements with the company, correct?

8 MS. SMITH: Objection, Your Honor.

9 THE COURT: Sustained.

10 Q You knew --

11 THE COURT: Well, I'll overrule it.

12 You can answer it, if you know.

13 A Sorry, can you reask the question, Counsel.

14 MR. BRODSKY: Could you ask that question back,  
15 Miss reporter.

16 (Whereupon, the record was read.)

17 BY MR. BRODSKY:

18 Q You also knew that some of the investors who had settled  
19 with Retrophin were these MSMB investors seeking true-ups for  
20 their Retrophin shares, correct?

21 A Yes.

22 THE COURT: Overruled. It's all right.

23 THE WITNESS: I just couldn't quite hear the  
24 objection.

25 MR. BRODSKY: Would you now restate the question

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1 that I just asked and then the answer.

2 (Whereupon, the record was read.)

3 A Yes.

4 Q And you shared with Mr. Aselage that MSMB investors were  
5 seeking true-ups for their Retrophin shares, correct?

6 A At some point I did, yes.

7 Q And you shared that with Mr. Panoff, correct?

8 A Yes, I did.

9 Q And you believed the board understood this in 2013,  
10 correct?

11 A Yes. At different points. Mr. Panoff only joined  
12 mid-'13.

13 Q And you understood that -- a few questions with respect  
14 to -- you were asked about Mr. Geller, Mr. Al Geller.

15 A Mr. Al Geller, yes.

16 Q Now, if we put up Defense Exhibit 104 -- I believe it's  
17 either a defense exhibit or a Government exhibit that's in  
18 evidence.

19 Is Defense Exhibit 104-42 in evidence?

20 Yes, Exhibit 245, if you can put that up.

21 (Exhibit published.)

22 Q And you were shown the Geller consulting agreement. Do  
23 you remember being shown that exhibit on redirect?

24 A Yes, it's one of the attachments.

25 Q Okay, instead of scrolling through it, there was a

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1 provision in there that said the consulting agreement and  
2 release, right, it was a title, Consulting Agreement and  
3 Release.

4 Maybe, Mr. Carter, you can find it.

5 (Exhibit published.)

6 Q Do you remember being shown this on your redirect  
7 examination?

8 A Yes, it was one of the attachments that I didn't have the  
9 chance to peruse fully.

10 Q You didn't have a chance to peruse fully before the board  
11 meeting?

12 A That's correct.

13 Q I take it you had time after the board meeting to peruse  
14 it?

15 A No. Because, again, Mr. Shkreli said he'd bring them  
16 back to the board. So I just put it in my file waiting for it  
17 re-referenced.

18 Q So when the board meeting ended, you decided not to look  
19 at those materials again?

20 A Yes. If I had been told that they would be brought back  
21 to us.

22 Q And if we scroll -- well, that first page. Thank you,  
23 Mr. Carter.

24 It says under the description of services, the  
25 consultant will serve as an adviser to the company and provide

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1 consulting services on strategic and corporate governance  
2 matters to the management the company.

3 A very general statement, correct, Mr. Richardson?

4 A Yes.

5 Q Common in your experience with respect to consulting  
6 agreements at Retrophin, that the consulting agreement is a  
7 very general language?

8 MS. SMITH: Objection, Your Honor.

9 THE COURT: Sustained.

10 Q At Retrophin, you've seen other consulting agreements,  
11 correct?

12 THE COURT: Before this one?

13 Q During 2013 -- between December 12, 2012 and  
14 September 1st, 2014, you saw other consulting agreements at  
15 Retrophin, correct?

16 A I think one or two had been shared. Believe one or two  
17 had been shared.

18 Q And they used general language with respect to the  
19 description of services, correct?

20 A I don't recall. And as I said, I never read the detail  
21 of this one, so, I can't give you a comparison, Counsel.

22 Q Do you see there's nothing in there with respect -- in  
23 this agreement, in this description of services, there's no  
24 statement in there with respect to whether or not there was a  
25 restriction on the amount of time or a minimum time

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1 expectation within that --

2 MS. SMITH: Objection, Your Honor.

3 Q -- that description of services, correct?

4 A Again, as I --

5 THE COURT: Excuse me. Wait. Wait.

6 THE WITNESS: I'm sorry.

7 THE COURT: Are you asking about what knows now or  
8 what he saw then?

9 MR. BRODSKY: This document right now in evidence  
10 whether or not this paragraph, description of services, makes  
11 any reference to minimum time expectations or any reference to  
12 restrictions about cost structures.

13 A No, I do not see those references in the document as I  
14 look at it now.

15 Q Understood.

16 And if we can put up -- if we scroll to release  
17 where it says, "release" and I believe that's going to be on  
18 paragraph 9 of the agreement -- 10 of the agreement on page 4.

19 MR. BRODSKY: If we can blow up where it says  
20 "release".

21 (Exhibit published.)

22 Q In perusing the document, Mr. Richardson, prior to the  
23 board meeting, did you notice in paragraph 10, the release,  
24 included in a release that unconditionally release, acquits  
25 and forever discharge Martin Shkreli, the company MSMB Capital

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1 Management, LLP, a Delaware limited partnership, MSMB Capital  
2 Management, LLC, a Delaware limited liability company, MSMB  
3 Healthcare, LP, a Delaware limited partnership, MSMB  
4 Healthcare Investors, LLC, a Delaware limited liability  
5 company, MSMB Capital Management, LLC; and each of their  
6 respective officers, directors, shareholders, partners,  
7 members, managers, et cetera.

8 A No, I did not see any of that through my quick perusal.

9 Q You agree this release as proposed here would cover you,  
10 correct?

11 MS. SMITH: Objection, Your Honor.

12 THE COURT: I'll overrule the objection.

13 A Reading it for the first time here, Counsel, I just have  
14 to reread it to discharges the company...

15 (Whereupon, the witness is reviewing the document.)

16 I don't see Retrophin listed as a company, which  
17 would cover me as board member.

18 Q Okay. So it says "the company," correct?

19 A It says "the company, MSMB Capital Management."

20 Q You don't believe that's referring to the company,  
21 Retrophin?

22 A No, I -- I read it as the company, MSMB Capital  
23 Management.

24 MR. BRODSKY: Let's scroll to the top of the page,  
25 first paragraph of this document. Yes. Where it says "this

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1 agreement". Yes, the very, very top, the agreement.

2 Q Does it not define the company as Retrophin, Inc., a  
3 Delaware corporation?

4 A It does in the opening.

5 Q And then if you look at description of services, is there  
6 not "consultant will serve as an adviser to the company" with  
7 capital C?

8 A Yes.

9 Q And your understanding the reference to "company" is to  
10 Retrophin?

11 A Yes. Certainly that's established at the top of the  
12 agreement.

13 Q All right. And the release does release any of its -- of  
14 all these entities, the respective officers, directors,  
15 correct?

16 A The paragraph you showed me earlier.

17 Q Yes.

18 A Yes, it does. If indeed Retrophin is included in that  
19 language.

20 Q And if Retrophin is included in that language and you're  
21 the director of Retrophin, fair to say the release would cover  
22 you?

23 A Yes, if that language did include Retrophin, it would  
24 cover me as a director.

25 MR. BRODSKY: Let's put up DX8281. And if we can

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1 blow up --

2 Q This is the September 9th, 2013 board agenda with your  
3 notes?

4 A Yes.

5 Q And number eight -- number nine, if we can just blow that  
6 up. It says "approve retaining Al Geller as consultant,"  
7 correct?

8 A Yes.

9 Q And it references "min time, expectations, question  
10 mark?"

11 A Yes.

12 Q Cost structures, correct?

13 A Yes.

14 Q Those are notes you took yourself before the board  
15 meeting?

16 A Yes, they are.

17 Q And did you know that the signed consulting agreement and  
18 release with Mr. Geller included language that, under  
19 description of services, that said the consultant shall  
20 perform the services as and when requested by the company, but  
21 in no event shall the performance of such services account for  
22 more than 20 percent of consultant's time?

23 MS. SMITH: Objection, Your Honor. It's beyond the  
24 scope conducted on this.

25 THE COURT: All right. I'll sustain that objection.



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1 Q Did you know that the Geller consulting agreement, the  
2 draft that you saw on September 9th, was amended to account  
3 for comments you made regarding costs -- minimum time,  
4 expectations?

5 MS. SMITH: Objection, Your Honor.

6 MR. BRODSKY: This is cross-examination.

7 MS. SMITH: Can we have a sidebar?

8 THE COURT: Okay.

9 (Continued on the next page.)

10 (Sidebar conference.)  
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## SIDEBAR CONFERENCE

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1 MS. SMITH: Your Honor, the witness has very clearly  
2 testified that those notes were notes that he wrote before the  
3 board meeting, and that from his testimony, he doesn't  
4 remember any discussion of the consulting agreement at the  
5 board meeting.

6 So Mr. Brodsky has leaped from his comments that he  
7 wrote on his own page to somehow that being incorporated into  
8 a consulting agreement that was never discussed at the board  
9 meeting, there's a logical break, and assuming that the final  
10 draft is actually edited based on his comments, which the  
11 testimony has established he never gave, he just wrote them  
12 down as something he would raise if the discussion happened.

13 MR. BRODSKY: I think it's clear from his testimony,  
14 Your Honor, that he doesn't have a good recollection of many  
15 of the events that took place at board meetings.

16 I think it's clear that his notes provide a  
17 expectation that he would discuss minimum time expectations.  
18 His lack of recollection does not preclude us from  
19 demonstrating to the jury, through this and other documents,  
20 that the language added to the Geller consulting agreement,  
21 which is -- and this language was added, it was the result of  
22 comments that Mr. Richardson made at a board meeting.

23 In fact, Your Honor, you will see contemporaneous  
24 emails, shortly after the board meeting, in which Mr. Greebel  
25 will say, to people like Mr. Geller, per the board, we have to

## SIDEBAR CONFERENCE

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1 change the agreement to include a minimum time.

2 MS. SMITH: No, the email say "no more than  
3 20 percent."

4 MR. BRODSKY: Right.

5 MS. SMITH: That is not a minimum time, that is a  
6 maximum time.

7 MR. BRODSKY: Well, we're now disputing and  
8 quibbling over the comments made at the board meeting as  
9 opposed to my -- I have a good faith basis to ask the question  
10 whether he knows language was added to the consulting  
11 agreement based on comments made at the board meeting.

12 MS. SMITH: Comments generally, but not his  
13 comments. And he already said that he didn't -- that it  
14 wasn't discussed at the board meeting.

15 He's just smooshing things together. First of all,  
16 this is way beyond the scope.

17 THE COURT: But I thought that was the basis of your  
18 objection.

19 MS. SMITH: Well also, because there's no  
20 evidentiary basis that he actually gave comments. So this  
21 question is now assuming that he gave comments and they were  
22 incorporated.

23 THE COURT: There is a gap between the witness'  
24 testimony that he made those -- that issue number nine was  
25 tabled and supposed to be brought up at some other time. And

SIDEBAR CONFERENCE

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1 then there could have -- I don't know what happened after  
2 that, but I think to show him a document and ask the jury  
3 to --

4 MR. BRODSKY: I'm not showing him this document,  
5 Your Honor.

6 THE COURT: You're showing him --

7 MR. BRODSKY: No, I'm not, I'm asking him a  
8 question.

9 THE COURT: The draft as of September 10th, 2013  
10 and --

11 MR. BRODSKY: Yes, September 9th.

12 THE COURT: So you're telling him that these  
13 comments did exist in a September 2013 version?

14 MR. BRODSKY: This is the note, September 9, 2013  
15 meeting, did not have those comments on the board agenda, but  
16 there was no mention in the description of services about a  
17 time expectation.

18 THE COURT: But what agreement are you showing  
19 him --

20 MR. BRODSKY: I'm not showing him.

21 THE COURT: Well, are you talking about ultimately?

22 MR. BRODSKY: The signed agreement.

23 THE COURT: So what date is that?

24 MR. BRODSKY: The signed agreement is an as of date  
25 of September 20th, 2013, I believe.

SIDEBAR CONFERENCE

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1 MS. SMITH: And the witness has never seen the final  
2 signed version.

3 MR. BRODSKY: I'm not showing it to him.

4 THE COURT: But you're asking him to comment on --  
5 you're stating that the final agreement did contain this  
6 language.

7 He doesn't know that personally, right? He hasn't  
8 said I know that, I saw it, I discussed it, it was something  
9 that I knew was going to be -- it's a bit of an unfair  
10 question because you're asking the witness to testify about  
11 something he has no personal knowledge of and hasn't seen  
12 before.

13 MR. BRODSKY: All right, I'll ask a better question.

14 THE COURT: Okay, okay.

15 MR. BRODSKY: Thank you.

16 (End of sidebar conference.)

17 (Continued on the next page.)

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19

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RICHARDSON - CROSS - BRODSKY

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1 (In open court; Jury present.)

2 BY MR. BRODSKY:

3 Q Mr. Richardson, with respect to min time expectation.

4 Do you see that?

5 A Yes, I do.

6 Q It was your desire to include a provision that the  
7 performance of the services of the consultants constitute no  
8 more than 20 percent of their time, correct?

9 A No.

10 Q And you don't have any recollection at the board meeting  
11 of discussing -- you yourself, the minimum or maximum time  
12 expectations of using a consultant?

13 A No, I believe I had met with Mr. Shkreli a day or two  
14 after this meeting and advised him of my position saying when  
15 you bring these back to the board, these are the factors I'm  
16 going to wanting to see.

17 Q Understood. And you have an understanding that  
18 Mr. Shkreli then spoke to Mr. Greebel regarding the consulting  
19 agreement?

20 A No, I have no -- no knowledge of what then happened at  
21 that point because I never saw the agreements again.

22 Q You were shown 8983R in evidence.

23 MR. BRODSKY: If we can put that up on the board.

24 (Exhibit published.)

25 Q This was the employment agreement of Mr. Shkreli that you

RICHARDSON - CROSS - BRODSKY

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1 were commenting on on November 25th, 2013, right?

2 A Yes, Counsel.

3 Q And in this particular instance it was Mr. Greebel who  
4 circulated the draft employment agreement for the second --  
5 this was the second time you were seeing the draft employment  
6 agreement, correct?

7 A Yes. Once at the board and then it was issued a second  
8 time, correct.

9 Q And were you asked on redirect where you got the draft  
10 employment agreement from, correct? In connection with this  
11 email?

12 A Yes.

13 Q On November 6th, you got the draft employment agreement  
14 from Mr. Panoff circulating the board materials prior to the  
15 November 8th board meeting.

16 A Yes, the first time it was part of a package from  
17 Mr. Panoff.

18 Q Understood.

19 And one of the provisions -- is it fair to say that  
20 when you were focused on political commentary and activities,  
21 you would have been focused on whether or not somebody could  
22 be terminated for extensive political commentary and  
23 activities outside the scope of their responsibilities as a  
24 board member?

25 A No, not necessarily on the termination. But just on

RICHARDSON - CROSS - BRODSKY

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1 their behavior.

2 Q On their behavior in general?

3 A Yes.

4 Q And political commentaries you said could be a separate  
5 provision, but is it fair to say that it could also be  
6 incorporated in other provisions, correct?

7 A It could be incorporated elsewhere. But I was starting  
8 to see it as a standalone heading.

9 Q Understood. And you were asked whether or not  
10 Mr. Greebel highlighted things to you.

11 Do you remember that question whether he highlighted  
12 things to you in the agreement?

13 A Yes.

14 Q Okay. Where in your -- did you highlight for Mr. Greebel  
15 or any of the board members in this email that you only  
16 skimmed the document?

17 A No, I didn't.

18 Q One final question, just one question. You were asked  
19 about the SEC investigation. This it will be my last  
20 question, Mr. Richardson, I promise.

21 When you went to the SEC interview in March 26th,  
22 2014, it is the SEC staff itself, correct, who told you the  
23 scope of their review did not include Retrophin, right?

24 A Yes. In response to one of my final questions.

25 MR. BRODSKY: No further questions.



RICHARDSON - CROSS - BRODSKY

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1 Thank you, sir.

2 MS. SMITH: I have no more questions.

3 THE COURT: All right, Mr. Richardson, you're

4 excused. Have a nice day.

5 (Whereupon, the witness was excused.)

6 MR. KESSLER: Next witness?

7 THE COURT: We're ready.

8 MR. KESSLER: The Government calls Richard Kocher.

9 THE COURT: Good afternoon.

10 Please raise your right hand.

11 (Witness takes the witness stand.)

12 RICHARD KOCHER, called as a witness, having been first duly

13 sworn/affirmed, was examined and testified as follows:

14 THE WITNESS: Yes, I do.

15 THE COURTROOM DEPUTY: Please state and spell your

16 full name, please, for the record.

17 MR. KESSLER: My name is Richard Kocher.

18 THE COURT: Please spell it.

19 MR. KESSLER: It's K-O-C-H-E-R.

20 THE COURT: All right. Just before you start, I

21 think that water there is for you.

22 THE WITNESS: Yes. Okay. Thank you.

23 THE COURT: You may go.

24 MR. KESSLER: Thank you.

25 DIRECT EXAMINATION

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1 BY MR. BRODSKY:

2 Q Good afternoon, Mr. Kocher.

3 A Hi.

4 Q Hi.

5 Did you invest in a hedge fund called MSMB  
6 Healthcare, LP?

7 A Yes, I did.

8 Q Did you ultimately sign a settlement agreement in  
9 connection with your investment in that fund?

10 A Yes, I did.

11 Q Okay. Where do you live?

12 A I live in Hoboken, New Jersey.

13 Q How long have you lived in Hoboken?

14 A Well, recently about three years. But before that, I had  
15 lived in Hoboken from probably another 18 years, from, let's  
16 say I guess it was 1978, when I moved there originally.

17 Q Do you have any children?

18 A Yes, I have one.

19 Q And are you married?

20 A Yes, I am.

21 Q Can you briefly describe your educational background.

22 A I graduated high school in 1969 from Saratoga High School  
23 in California, and then I went to Stanford and I graduated  
24 from Stanford in 1974.

25 Q Can you describe your professional experiences after you

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1 graduated?

2 A I -- well, I traveled across the United States and ended  
3 up with my wife, and we -- we -- well, I -- if you want -- as  
4 far as professional goes, I started out just doing odds and  
5 ends in Boston, and then I started actually buying property  
6 and building in Hoboken.

7 Q Where do you work now?

8 A I work in Hoboken. Mostly.

9 Q What kind of work do you do?

10 A I'm a contractor and builder.

11 Q How do you finance your business operations?

12 A Well, I do it through both personal loans and bank loans,  
13 and obviously put my own money in as well.

14 Q Is having a source of cash or liquidity important to your  
15 business?

16 A Yes, very important.

17 Q You invest in real estate?

18 A Yes. Almost entirely.

19 Q Do you make any other kind of investments?

20 A Very rarely.

21 Q What other kinds of investments do you make?

22 A Well, for a period of time after I settled on -- where I  
23 got money from a settlement on a property that I had owned, I  
24 invested briefly with stocks. And that was with Smith Barney.  
25 And then subsequent to that, I invested with MSMB.

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1 Q Is Smith Barney a welt management firm?

2 A Yes.

3 Q In late 2011, did a hedge fund called MSMB Healthcare, LP  
4 come to your attention?

5 A Yes.

6 Q What was your understanding of MSMB Healthcare, LP?

7 A Well, my understanding was that it was a hedge fund that  
8 was -- a medical hedge fund that had great potential.

9 Q What's a hedge fund?

10 A A hedge fund basically owns some kind of stocks, bonds  
11 and, you know, basically I'm not sure of the exact definition  
12 of a "hedge fund."

13 Q Some sort of investment fund that gets money from  
14 investors and then makes investments?

15 A That's correct.

16 Q Who brought MSMB Healthcare, LP to your attention?

17 A Kevin Mulleady.

18 Q Who is Kevin Mulleady?

19 A Well, Kevin Mulleady was actually a financial adviser for  
20 me at Smith Barney originally and he was actually someone that  
21 I had met through my son at an event that my son had hosted in  
22 Hoboken.

23 Q How did he bring MSMB Healthcare, LP to your attention?

24 A Well, he -- he called me about it and told me that he was  
25 now working for MSMB and that he felt like it was, you know,

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1 that the hedge fund was going to take off basically and become  
2 more valuable.

3 Q Did you come to learn who was the manager of MSMB  
4 Healthcare, LP?

5 A Yes.

6 Q Who was that?

7 A Well aside from Kevin, it was Martin Shkreli.

8 Q Did you understand the relationship between Martin  
9 Shkreli and Kevin Mulleady with respect to that hedge fund?

10 A Yes. Kevin worked for Martin.

11 Q Did you invest in MSMB Healthcare, LP in early 2012?

12 A Yes, I did.

13 Q Did you talk with Mr. Shkreli before you invested?

14 A No, I did not.

15 Q Did you talk with Kevin Mulleady before you invested?

16 A Yes.

17 Q Did you read a private placement memorandum for MSMB  
18 Healthcare, LP before you invested?

19 A I might have briefly glanced at it, but I don't really  
20 remember specifically reading it in detail.

21 Q Why did you decide to invest in MSMB Healthcare, LP?

22 A I invested really on Kevin's recommendation.

23 Q Did you have an understanding about whether the fund  
24 would be liquid or illiquid?

25 A It was supposed to be liquid.

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1 Q What does it mean for a fund to be liquid?

2 A That if you want to take your money out, that they would  
3 give -- give you your money back that you invested. And in  
4 this case, the original agreement I believe said you can get  
5 your money back within a month.

6 Q Was that important to you?

7 A Yes.

8 Q Why?

9 A Well, because I had real estate investments that I was  
10 actually actively seeking and I knew I was going to need money  
11 to be able to close on those properties.

12 Q Did you have an understanding of the kinds of investments  
13 MSMB Healthcare, LP would make?

14 A I did not really specifically. I knew that they were in  
15 the medical field.

16 Q Did you have an understanding -- well, let me ask it this  
17 way:

18 Do you understand what "diversification" means?

19 A Well, I know what diversification means. It means that  
20 you're diversified into different companies.

21 Q And based on your conversation with Kevin Mulleady before  
22 you invested, did you understand whether MSMB Healthcare, LP  
23 would be investing in a diversified set of investments?

24 A Yes, I was -- that was my impression that it was going to  
25 be diversified.

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1 Q Okay. So when you made your original investment in MSMB  
2 Healthcare, LP, did you sign something called a subscription  
3 agreement?

4 A Yes, I did.

5 Q Okay. If we can show the witness Government Exhibit 33.

6 And, Mr. Kocher, there should be a binder in front  
7 of you with some documents. The first tab should be  
8 Government Exhibit 33.

9 Do you see that?

10 A Yes, I do.

11 Q All right. If you look at the first page and then look  
12 at the very last page. Take a minute to do that.

13 A Okay.

14 Q Is this the subscription agreement that you signed for  
15 your first investment in MSMB Healthcare, LP?

16 A Yes.

17 MR. KESSLER: I offer Government Exhibit 33.

18 MR. DUBIN: No objection.

19 THE COURT: We receive Government Exhibit 33.

20 (Government Exhibit 33, was received in evidence.)

21 BY MR. KESSLER:

22 Q So, Mr. Kocher, we're looking at the first page of  
23 Government Exhibit 33.

24 Do you see right in center it says MSMB Healthcare,  
25 LP?

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1 A Yes.

2 Q Is that the name of the fund in which you invested?

3 A Yes, I believe so.

4 Q And then below it says "subscription agreement"?

5 A Yes.

6 Q So if we go to the second page of the document now. The  
7 top, again, says MSMB Healthcare, LP.

8 And then below that there's a line that says "to  
9 MSMB Healthcare Investors, LLC."

10 A I don't follow where we are.

11 Q So if you look at the second page of the document that's  
12 behind Tab 1.

13 A Okay.

14 Q The top says MSMB Healthcare, LP and then subscription  
15 agreement?

16 A Yeah, I don't see that. Maybe I'm already on that page.

17 Q So there right below that there should be a "to", T-O,  
18 colon?

19 A Yes, okay. I'm sorry.

20 Q You see it's "to" meaning T-O, colon, MSMB Healthcare  
21 Investors, LLC?

22 A Yes.

23 Q Did you understand that that was the general partner of  
24 the fund?

25 A No.



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1 Q All right. If you look down at the next paragraph.

2 A Yes.

3 Q All right. Do you see the first sentence there it says,  
4 You have informed the undersigned, the subscriber, that MSMB  
5 Healthcare, LP has been organized as a Delaware limited  
6 partnership, the partnership of which MSMB Healthcare  
7 Investors, LLC is the general partner, the partnership is to  
8 be operated in accordance with the limited partnership  
9 agreement of the partnership. And then it continues.

10 A Yes.

11 Q So does that indicate to you that MSMB Healthcare  
12 Investors, LLC is the managing -- the general partner of the  
13 hedge fund?

14 A Yes.

15 Q Okay. And then if we scroll down a little bit in the  
16 document, on this page there's an item number one, it says  
17 "subscription".

18 A Uh-huh.

19 Q Then you see there's a number "100,000" written in.

20 A Yes.

21 Q Was that the size of your investment?

22 A Yes.

23 Q Now, if we go to last page of the document, it ends Bates  
24 stamp 11888.

25 Is that your signature on the top of the page?

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1 A Yes.

2 Q And then if you go one page backward, so the second to  
3 the last page.

4 A Uh-huh.

5 Q There's item F for the sender of the wiring instructions  
6 for MSMB Healthcare, LP? And then there's a bank account.

7 Do you see that?

8 A Yes.

9 Q Was that the bank account for MSMB Healthcare, LP?

10 A Yes.

11 Q Is that where you wired your investment of \$100,000?

12 A I would assume, yes, that that's the case. But I don't  
13 remember specifically.

14 Q Well, did you knowingly wire money to any bank account  
15 not associated with MSMB Healthcare, LP?

16 A No. No.

17 What I'm saying is I assume that's where I sent it.

18 Q All right.

19 MR. DUBIN: I object to what he assumed.

20 THE COURT: Sir, you can testify to the best of your  
21 recollection. What you know. What you observed. What you  
22 heard. What you read. And don't assume anything. So if it's  
23 your best recollection, you may say so. If you don't  
24 remember, you should say so, and the questions will be asked.

25 THE WITNESS: Okay. I don't clearly remember if

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1 that was the exact bank account.

2 MR. KESSLER: Understood.

3 Q When you made this investment, did you expect that the  
4 money you invested would be used to pay expenses or for other  
5 companies?

6 A No.

7 Q Did you authorize that any money you invested be used to  
8 pay expenses for any other companies?

9 A No.

10 MR. DUBIN: Objection.

11 THE COURT: Overruled.

12 Q No?

13 A No.

14 Q All right. Now, in May 2012, did you make a second  
15 investment in MSMB Healthcare, LP?

16 A Yes, I did.

17 Q Why did you do that?

18 A Kevin Mulleady called me and said that MSMB needed money  
19 and that, you know, that they needed it that week.

20 And he didn't say specifically what it was for, but  
21 he said that, you know, again, he felt like the company was  
22 going to do very well and -- and I think originally I said I  
23 wasn't going to be able to do it because I was very short on  
24 cash, but then I figured out a way to do it so I did invest  
25 another 100,000. With the caveat that if I invested that

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1 quickly, that they would also be able to return my money  
2 quickly to me if I needed it.

3 Q And in connection with your second investment, did you  
4 sign another subscription agreement of some sort?

5 A Yes.

6 MR. KESSLER: Can we show the witness Government  
7 Exhibit 34.

8 Q Mr. Kocher, that should be Tab 2.

9 Do you see this document?

10 A Yes.

11 Q Is this the agreement you signed in connection with your  
12 second investment in MSMB Healthcare, LP?

13 A Yes.

14 Q And, in fact, this document contains a signed agreement  
15 on the first page, and then there's a second letter as part of  
16 the same exhibit.

17 Do you see that?

18 A Yes.

19 Q Did you also sign this second letter?

20 A Yes.

21 Q Was that a side agreement in connection with your  
22 investment?

23 A Yes, it is.

24 MR. KESSLER: I offer Government Exhibit 34.

25 MR. DUBIN: No objection.

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1 THE COURT: We receive Government Exhibit 34.

2 (Government Exhibit 34, was received in evidence.)

3 (Exhibit published.)

4 Q Mr. Kocher, we're looking at the first page of Government  
5 Exhibit 34. At the top there's "subscription for additional  
6 interests."

7 Do you see that? The very top of the page.

8 A Is this -- sorry.

9 Q So if you look behind Tab 2, it should be the very first  
10 page.

11 A Oh, the first page. Okay, I'm sorry.

12 Q It says "subscription for additional interests"?

13 A Yes.

14 Q All right. And then there's a date, May 1st, 2012.

15 Is that approximately when you made the second  
16 investment?

17 A Yes.

18 Q And then there's an address for MSMB Healthcare, LP.

19 A Yes.

20 Q And then if you look at the first paragraph of the  
21 letter, it says, the undersigned hereby subscribes for an  
22 additional investment in the amount of \$100,000.

23 Is that the size of your second investment?

24 A Is this on the next page?

25 Q The first page. It's on the first page. You can also

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1 follow along on the screen.

2 A All right, yes, I see it.

3 Q So your second investment was also for \$100,000?

4 A Yes, it was.

5 Q You signed this letter?

6 A Yes.

7 Q Now, if we go to the second page of the document, ending  
8 Bates stamp 378.

9 Is this the other letter you signed in connection  
10 with your investment?

11 A Yes.

12 Q What was the purpose of this letter?

13 A Well, the main purpose of this letter was to basically  
14 have it spelled out that I would be able to get my money back  
15 within a week's notice so that -- because I knew I was going  
16 to be tight for money.

17 Q All right. If you look at the paragraph that has the  
18 number two in front of it. Sort of the middle of the page.

19 A Yes.

20 Q There's an item called liquidity?

21 A Yes.

22 Q It says, notwithstanding anything to the contrary set  
23 forth in the memorandum, you will be permitted to redeem your  
24 exempt interest as of the final business day of each calendar  
25 week instead of the final business day of each calendar month.

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1 Do you see that?

2 A Yes.

3 Q Is that the agreement about liquidity you just mentioned?

4 A Yes.

5 Q Did you also sign this agreement?

6 A Yes.

7 Q Now, if you look at the last page of this document, do  
8 you see there's a signature area for Martin Shkreli, managing  
9 member?

10 A Yes, uh-huh.

11 Q It's not signed, correct?

12 A That's correct.

13 Q Were these documents ultimately signed by Martin Shkreli?

14 A I don't remember.

15 Q All right. So then let me show you, just for the  
16 witness, Government Exhibit 34A. It's the next tab.

17 A Yes.

18 Q Do you see that?

19 A Uh-huh.

20 Q If you flip through this, is this the same additional  
21 subscription agreement and letter that we just looked at?

22 A Yes. Yes.

23 Q All right. And are these versions signed by Martin  
24 Shkreli.

25 A Yes.

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1 MR. KESSLER: So I offer Government Exhibit 34A.

2 MR. DUBIN: Just one moment, Your Honor.

3 I have no objection.

4 THE COURT: All right, we will receive Government  
5 Exhibit 34A.

6 (Government Exhibit 34A, was received in evidence.)

7 (Exhibit published.)

8 Q If you take a look at the first page, this is the same  
9 letter we were just looking at --

10 A Yes.

11 Q -- with the subscription for additional interest, except  
12 Mr. Shkreli has signed at the bottom left; is that right?

13 A Yes.

14 Q Okay. And if we go to the last page, this is the  
15 signature page of the other letter we just looked at that  
16 Mr. Shkreli has signed?

17 A Yes.

18 Q Is that correct?

19 A Yes, that's correct.

20 Q Okay. All right.

21 So after you invested this second \$100,000 for a  
22 total of \$200,000, did you receive periodic performance  
23 updates about your investments?

24 A I was supposed to. But I did get a few updates, but I  
25 don't remember the exact -- I think over a six- or seven-month



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1 period, I might have gotten a couple of updates, but they were  
2 at the very end.

3 Q All right. If I can ask you to take a look at Tabs 4, 5,  
4 6 and 7 in your binder.

5 A Uh-huh.

6 Q Which corresponds with Government Exhibits 83-1, 83-2,  
7 83-3, and 83-4. Just ask you to confirm that these are the  
8 performance statements that you did receive in connection with  
9 your investment.

10 (Whereupon, the witness is reviewing documents.)

11 A Yes.

12 Q And did you receive each of these from either Mr. Shkreli  
13 or from an account management company that was working with  
14 MSMB Healthcare, LP?

15 A Yes.

16 (Continued on next page.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

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1 MR. KESSLER: So I offer Government's Exhibit 83-1,  
2 83-2, 83-3, and 83-4.

3 MR. DUBIN: No objection.

4 THE COURT: Exhibits 83-1, 83-2, 83-3 and 83-4 we  
5 will receive.

6 (Government Exhibit 83-1, was received in evidence.)

7 (Government Exhibit 83-2, was received in evidence.)

8 (Government Exhibit 83-3, was received in evidence.)

9 (Government Exhibit 83-4, was received in evidence.)

10 BY MR. KESSLER:

11 Q We're going to look at the first and the last, so behind  
12 tab four in your binder is Government's Exhibit 83-1. Do you  
13 see that?

14 A Yes.

15 Q This is an April 17 e-mail from  
16 InvestorRelations@NavConsulting.net to  
17 Rich@KocherConstruction.com?

18 A Uh-huh.

19 Q An e-mail from the account management company to you?

20 A Uh-huh.

21 Q Is that right?

22 A Yes.

23 Q "Please see attached statement for the month of  
24 February 2012 for your investment in MSMB Healthcare LP," do  
25 you see that?

1 A Yes.

2 Q Go to the second page of the document, is this the  
3 statement you received?

4 A Yes.

5 Q If we look a third of the way down the page, there is  
6 something that says, beginning balance, then additions. If  
7 you read across three there is \$100,000, do you see that?

8 A Yes.

9 Q That reflects your initial investment?

10 A Yes.

11 Q If you look down, most of the way to the bottom of the  
12 page, there is something that says ending balance?

13 A Yes.

14 Q \$98,000 and change?

15 A Yes.

16 Q Does this reflect the performance of your investment in  
17 February of 2012?

18 A Yes.

19 Q If we scroll a little bit further down you see there a  
20 break down of ending balance?

21 A Yes.

22 Q There is a description of a number of different ways in  
23 which your money has been allocated?

24 A Yes.

25 Q One of the entries under investment in private affiliate

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1 funds is Retrophin LLC, do you see that?

2 A Yes.

3 Q When you received this performance statement, which you  
4 received in April 2012, did you have an understanding of what  
5 Retrophin LLC was?

6 A I'm not sure if I did at that time.

7 Q Did you come to have an understanding of Retrophin LLC?

8 A Yes.

9 Q What was that?

10 MR. DUBIN: Time frame.

11 THE COURT: At the time of the statement. Is that  
12 what your question is targeted to?

13 MR. KESSLER: He said he didn't have an  
14 understanding at this time.

15 Q When do you recall becoming aware of what Retrophin LLC  
16 was?

17 A Well, I heard that Retrophin was, and this is mostly I  
18 think through Kevin Mulleady, it was a medical company that, I  
19 don't remember the exact, what exactly what they did, but you  
20 know, that they, that they were a company that was going to  
21 become very successful. But I didn't, you know, I didn't, I  
22 didn't follow most of this stuff very carefully, or you know.  
23 My whole orientation is towards construction, building and  
24 development. And so this is just something that I parked my  
25 money into with the understanding that it was going to

1 increase in value.

2 Q Sure. So fair to say you didn't invest directly in  
3 Retrophin LLC?

4 A No.

5 Q So this is the February 2012 performance statement. If  
6 you go to tab --

7 THE COURT: And that was Government's Exhibit 83-1.

8 Q If we fast forward in time to tab seven, Government's  
9 Exhibit 83-4, do you see that?

10 A Yes.

11 Q So this is an e-mail in September, September 9, 2012,  
12 from Martin Shkreli to you?

13 A Yes.

14 Q Copies Kevin Mulleady?

15 A Yes.

16 Q And he attaches the July 2012 investor statement?

17 A Right.

18 Q Text says, "Please see the attached statement for the  
19 month of July 2012 for your investment in MSMB Healthcare"?

20 A Yes.

21 Q The second page there is a different account statement  
22 reflecting the status of your investment in MSMB Healthcare;  
23 is that fair?

24 A Yes.

25 Q This shows that as of July 31, 2012, your investment of

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1 \$200,000 had become \$231,000?

2 A That's correct.

3 Q Taking the investor statements -- strike that.

4 Taking the performance statements you received in  
5 total, the four that are now in evidence, did you rely on  
6 these statements?

7 A Not very much. I basically was still relying on what  
8 Kevin Mulleady was saying. And part of the thing was, was  
9 that, you know, we didn't get monthly statements. When we did  
10 get the statements, they came late. So I assumed, yes, this  
11 was at that time the account value. But you know, I relied on  
12 it to a certain extent. Let's put it that way.

13 Q Did you believe they were false?

14 A No.

15 Q As of the time you received the performance statement in  
16 September 2012, did you have any understanding of the  
17 different investments the MSMB Healthcare LP fund had been  
18 making?

19 A No.

20 Q As of this time had anyone told you that the MSMB  
21 Healthcare LP fund was invested entirely in Retrophin LLC?

22 A No.

23 Q Had anyone told you whether MSMB Healthcare LP had made  
24 any loans to any other companies as of the date you received  
25 this e-mail?

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1 A No.

2 Q Had you authorized any such loans?

3 A No.

4 Q Did there come a time after you received these  
5 performance statements that you learned that the MSMB  
6 Healthcare LP fund would be shutting down?

7 A Well, I received a statement that basically said that  
8 from Martin.

9 Q Statement meaning an account statement or a letter?

10 A A letter.

11 Q If we can show the witness Government's Exhibit 104-1,  
12 which is behind tab eight. Take a minute to look at this,  
13 Mr. Kocher.

14 Is this an e-mail from Martin Shkreli to an  
15 unidentified group of recipients?

16 A Yes.

17 Q December 9, 2012?

18 A Yes.

19 Q Is that the same day that you received that performance  
20 statement we just looked at?

21 A Yes.

22 Q Is this the e-mail you were referring to when you said  
23 that you learned that that hedge fund would be shutting down  
24 its operations?

25 A Yes.

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1 MR. KESSLER: I offer 104-1.

2 MR. DUBIN: No objection.

3 THE COURT: We will receive Government 104-1.

4 (Government Exhibit 104-1, was received in  
5 evidence.)

6 BY MR. KESSLER:

7 Q If we can focus on the first paragraph. Mr. Shkreli  
8 writes, "I decided to wind down our hedge fund partnership  
9 with the goal of completing the liquidation of the funds by  
10 November, December 1st, 2012." Do you see that?

11 A Yes.

12 Q Did you understand that Mr. Shkreli was writing to  
13 investors in one fund or more than one fund?

14 A I thought it was one fund.

15 Q This letter here refers to partnerships and the funds  
16 plural; is that right?

17 A Yes.

18 Q Mr. Shkreli writes, "As you know, MSMB has found  
19 increasing opportunities in private equity," do you see that?

20 A Yes.

21 Q Next paragraph, "We have decided the best structure for  
22 such an entity is a public company or private corporation.  
23 Retrophin LLC, our MSMB founded this biotechnology operation,  
24 will be that company. Retrophin has made a lot of progress  
25 since its inception in 2011. Today the company has a full



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1 pipeline and several marketed cash generating products." Do  
2 you see that?

3 A Yes.

4 Q Did you have any reason to doubt any of this when you  
5 received the letter?

6 A No.

7 Q If we scroll down some more to the next paragraph. So  
8 Mr. Shkreli begins describing the progress in the fund and he  
9 identifies a number of individuals so I'm going to walk  
10 through those with you.

11 So first he writes, "We have tripled the size of our  
12 fund if you have not been in the office lately." Had you ever  
13 been in the office?

14 A No.

15 Q "The most senior hire we have made is that of Tom  
16 Fernandez who joins after ten-plus years with the Galleon  
17 Group." Had you ever met Mr. Fernandez?

18 A No.

19 Q If we move a couple of sentences forward, there is a  
20 sentence, "Many of you have met Jackson Su, our current COO."  
21 Do you see that?

22 COO is Chief Operating Officer?

23 A Yes.

24 Q Had you met Mr. Su at this point?

25 A No.

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1 Q Mr. Shkreli goes on to describe Mr. Su's background, do  
2 you see that?

3 A Yes.

4 Q About three lines up in this paragraph he writes, "Marek  
5 Biestek, my co-founder and partner and I, round out MSMB's,  
6 quote, "executive committee," unquote. This four-person team  
7 will manage MSMB's operations going forward. And even though  
8 we will not be running, quote, "outside money," unquote, we  
9 will still have activities independent of Retrophin." Do you  
10 see that?

11 A Yes.

12 Q Did you have an understanding about whether there would  
13 still be activities in the MSMB funds and then separate  
14 activities in Retrophin at the point you got this letter?

15 A No.

16 Q You didn't have an understanding one way or the other?

17 A No.

18 Q Did you have any reason to doubt the statement in the  
19 letter?

20 MR. DUBIN: Objection, your Honor.

21 THE COURT: Overruled.

22 A No. I didn't really, I didn't have any reason to doubt  
23 it, no.

24 Q So if we go to the next paragraph, "Another key hire at  
25 MSMB is that of George Huang, Ph.D, who comes to us from the

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1 recently shuttered, quote, "Tiger Cub," unquote, Sabertooth.  
2 We have very high hopes for George. He and a new hire,  
3 Dr. Christopher James, an actual brain surgeon, joined the  
4 biotechnology group with Andrew Vaino, who has been with MSMB  
5 for sometime." Do you see that?

6 A Yes.

7 Q Did you know any of those people at the point you  
8 received the letter?

9 A No.

10 Q If we go to the next paragraph, "Tim Pierotti, who  
11 manages MSMB's Consumer investing efforts is broadening his  
12 roll and teaming up with Marek Biestek in looking at medical  
13 technology assets." Do you see that?

14 Did you know who of Mr. Pierotti was?

15 A No.

16 Q "Kevin Mulleady, our original CEO and investor relations  
17 head, is doing well. He expanded his role in the business  
18 development, hospitality structure and continues to manage  
19 client relationships." Do you see that?

20 A Yes.

21 Q You knew Mr. Mulleady.

22 A Yes.

23 Q Beginning the next paragraph, Mr. Shkreli writes,  
24 "Retrophin has hired Steve Aselage as CEO." Do you see?

25 A Yes.

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1 Q Did you know Mr. Aselage?

2 A No.

3 Q So let's go to the next page, a few more questions. If  
4 we look at first full paragraph, Mr. Shkreli says he can't  
5 thank the partners enough, talks about redemption requests.  
6 In the middle he writes, "Original MSMB investors, 2009, have  
7 just about doubled their money net of fees." Do you see that?

8 A Yes.

9 Q In the final paragraph, beginning, Mr. Shkreli writes, "A  
10 few operational notes, investors will have their limited  
11 partnership interests redeemed by the fund for cash.  
12 Alternatively, investors may ask for redemption of Retrophin  
13 shares or a combination of Retrophin shares and cash." Do you  
14 see that?

15 A Yes.

16 Q Did have you an understanding of what you could do with  
17 the money that you believed was invested in MSMB Healthcare  
18 LP?

19 A Would you ask that question again?

20 Q Sure. Let me ask a better question.

21 When you received this letter and you read it, did  
22 you believe you could withdraw your money in cash, your  
23 investment in cash?

24 A Yes. He says it in this letter.

25 Q Did you have any reason to doubt it?

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1 A No.

2 Q Did you have the option to redeem your investment for  
3 Retrophin shares?

4 A Yes.

5 Q Did you make a decision to redeem your investment?

6 A Yes.

7 Q Did you choose to redeem your investment in cash or stock  
8 or combination of cash and stock?

9 A Well, I wanted cash to start with.

10 Q I'll show you -- strike that.

11 Did you engage in a series of e-mail communications  
12 with Martin Shkreli, and in some cases with an individual  
13 named Evan Greebel, about your request to redeem your funds  
14 from the MSMB Healthcare LP fund?

15 A Yes.

16 Q So let's show the witness Government's Exhibit 104-5-A,  
17 which is behind tab nine in your binder, Mr. Kocher. Take a  
18 minute to look at this document. Have you reviewed that?

19 A Yes.

20 Q Is this a series of e-mails between you, Martin Shkreli,  
21 Evan Greebel and a few other individuals about your request to  
22 redeem your investment in the MSMB Healthcare LP fund?

23 A Yes.

24 Q Did these e-mails take place between March 11 and  
25 March 12, 2013?

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1 A Yes.

2 MR. KESSLER: I offer 104-5-A.

3 MR. DUBIN: No objection.

4 THE COURT: We will receive 104-5-A.

5 (Government Exhibit 104-5-A, was received in  
6 evidence.)

7 BY MR. KESSLER:

8 Q Mr. Kocher, the way this is laid out is the earliest  
9 e-mail is at the bottom; is that correct?

10 A Yes.

11 Q If we look at the bottom of the first page, there is an  
12 email on March 11 from you to Martin Shkreli, do you see that?

13 A Yes.

14 Q You copy EvanGreebel@Kattenlaw.com?

15 A Yes.

16 Q At the point you sent this e-mail, did you have a  
17 understanding who Evan Greebel was?

18 A It was my understanding he was the attorney for Martin.

19 Q For Martin Shkreli?

20 A Yes.

21 Q What was that understanding based on?

22 A Well, for one, I know that Kevin told me that. But it  
23 was also, you know --

24 MR. DUBIN: Objection, your Honor. What he was --  
25 move to strike that, your Honor.

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1 THE COURT: Well, we can address this if you want at  
2 sidebar.

3 MR. KESSLER: I'm happy to move on.

4 MR. DUBIN: I would still move to strike.

5 THE COURT: He wants to move to strike the response  
6 of the witness regarding what Mr. Mulleady told him about  
7 Mr. Greebel. Are you objecting or do you consent?

8 MR. KESSLER: It's not offered for the truth. I'm  
9 happy to have the answer stricken.

10 MR. DUBIN: There is no exception regardless of --

11 THE COURT: If you're not objecting to the strike,  
12 we'll strike it.

13 MR. KESSLER: Maybe what we should do is a quick  
14 sidebar.

15 THE COURT: We're going to have a quick sidebar,  
16 ladies and gentlemen of the jury.

17 (Continued on the next page.)

18 (Sidebar conference.)

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## SIDEBAR CONFERENCE

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1 MR. KESSLER: The witness put Evan Greebel on an  
2 e-mail, I'm asking why he put Evan Greebel on an e-mail. I'm  
3 not offering anything he told for the truth, that whatever he  
4 was told about Evan Greebel is accurate. But he should be  
5 able to explain why he put Evan Greebel on the e-mail.

6 THE COURT: They are disputing whether Mr. Greebel  
7 is Mr. Shkreli's lawyer, that's what the witness said.

8 MR. KESSLER: That's his understanding from  
9 Mr. Mulleady. He's free to cross-examine.

10 THE COURT: The concern is you're offering for the  
11 truth.

12 MR. KESSLER: I'm not offering for the truth. I'm  
13 offering to explain why he put Evan Greebel on an e-mail.

14 MR. DUBIN: Your Honor --

15 MR. KESSLER: That was his understanding. They are  
16 free to cross-examine him and make clear that he did or didn't  
17 know what the relationship between Mr. Greebel and Mr. Shkreli  
18 was, or how he knew about that, and what weight of whatever he  
19 was told should be given.

20 THE COURT: All right. So if --

21 MR. DUBIN: If you're going to rule in my favor, I  
22 don't want to snatch the feet from the jaws of victory.

23 THE COURT: If you don't have an objection to  
24 striking that reference as to how he understood, or why he  
25 brought -- he said he testified -- strike that.



## SIDEBAR CONFERENCE

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1 He testified that he put Mr. Greebel on the e-mail  
2 because he understood that Mr. Greebel represented  
3 Mr. Shkreli.

4 MR. KESSLER: That's why he did it.

5 THE COURT: Whether or not he heard that from  
6 Mr. Mulleady is what Mr. Dubin is objecting to. We'll strike  
7 the reference as to how Mr. Kocher learned about Mr. Greebel's  
8 role as attorney.

9 MR. KESSLER: Assuming they will not on cross ask  
10 why Mr. Kocher believed he did what he did.

11 THE COURT: If they open the door, it's fair on  
12 redirect. I don't think Mr. Dubin is going to do that.

13 Is Mr. Mulleady a co-conspirator?

14 MR. KESSLER: Absolutely.

15 MR. DUBIN: This is way before, your Honor.

16 MR. KESSLER: It's directly in the middle of.

17 THE COURT: It's in the middle of charged conduct.  
18 My recollection from the last trial is that Mr. Mulleady was  
19 identified as an unindicted co-conspirator, so it would be  
20 admissible as a --

21 MR. KESSLER: Admissible for that reason too. But  
22 frankly, it shouldn't have to get there.

23 MR. DUBIN: This is news to us, that all of a sudden  
24 there has been no evidence proffered at this trial that Kevin  
25 Mulleady is a co-conspirator of Mr. Greebel, number one.

SIDEBAR CONFERENCE

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1           Number two, there is no reason for -- if it's been  
2 struck, it's struck. But I'm going to ask him if he knows one  
3 way or another on cross -- can I finish, please? I am going  
4 to ask him if he knows one way or another if Evan Greebel is  
5 the attorney for MSMB or for Martin Shkreli personally. And  
6 the only reason that that answer can be -- the only reason  
7 that I objected is because there is no hearsay objection. He  
8 was clearly answering for the truth or being offered for the  
9 truth that Evan Greebel was Martin Shkreli's attorney. And  
10 then Mr. Kessler asked him again.

11           MR. KESSLER: I asked him, why did you put Evan  
12 Greebel on the e-mail, what was your understanding of the  
13 relationship, and how did you come to that understanding.

14           THE COURT: So how did you come to the  
15 understanding, will be stricken. Okay.

16           MR. KESSLER: Here's the thing, if it's going to be  
17 stricken there can't be cross-examination about what he  
18 understands the relationship between Greebel and Shkreli to  
19 be. Because the answer --

20           MR. DUBIN: I'm not going to ask him why he  
21 understands it.

22           MR. KESSLER: His truthful answer is Kevin Mulleady  
23 told me.

24           MR. DUBIN: I will be careful as to how I construct  
25 the question not to elicit that testimony.

SIDEBAR CONFERENCE

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1 THE COURT: If it comes out in cross, it comes out  
2 in cross. I think he'll be careful.

3 I'll instruct the jury that they will disregard the  
4 witness's testimony regarding how he came to understand  
5 Mr. Greebel's role or relationship or whatever word you want  
6 me to use.

7 MR. KESSLER: That's fine. I want the record to be  
8 clear, I will move on from that particular one, but the idea  
9 that Kevin Mulleady is not a co-conspirator or these  
10 statements are not made in furtherance of the conspiracy, is  
11 obviously, that is going to come up again and again in the  
12 trial. We can address that in some other statement.

13 THE COURT: Understood. I think since they were  
14 closely observing the trial, that was made clear.

15 MR. KESSLER: I have about five more minutes.

16 (End of sidebar conference.)

17 (Continued on the next page.)  
18  
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(In open court.)

BY MR. KESSLER:

Q I think you just said why you put Mr. Greebel on the e-mail. Can you tell who the other people on this e-mail are?

MR. DUBIN: Your Honor.

THE COURT: Let me instruct the jury. Ladies and gentlemen of the jury, there was a question and answer as to how Mr. Kocher formed the understanding that Mr. Greebel represented Mr. Shkreli. And that question and the answer are stricken, and you should disregard both.

Q So we talked about Evan Greebel, who are the other three people you put on this e-mail.

A First off, the original one from Martin where it says Monday, March 11, 2013, it's to me and the CC is to Evan Greebel at KattenLaw.com. So I think that's how I got his e-mail originally.

So which one are you asking me for?

Q The bottom of the first page of Government's Exhibit 104-5-A, the e-mail from you to Mr. Shkreli, Mr. Greebel and Jim@AttorneyBurke.com?

A Yes.

Q Who is he?

A He is actually my real estate attorney.

Q Kevin@StoneCornerGroup.com, is that Kevin Mulleady?

A Yes. But he's I don't think any longer with or tied to

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1 Martin at this point.

2 Q And then the last e-mail is your wife?

3 A Yes, that's correct.

4 Q The subject is LP Kocher, do you see that?

5 A Yes.

6 Q LP is that references to limited partnership?

7 A Yes.

8 Q You write, "Hello, Martin. I've repeatedly attempted to  
9 contact you via phone over the past two days. I know that you  
10 are busy but I have given over two months' notice that I was  
11 going to need to liquidate my account by the 15th of this  
12 month, which is the end of this week." Do you see that?

13 A Yes.

14 Q Is that true?

15 A Yes.

16 Q Then you say, "I've been in contact with Kevin Mulleady  
17 who has been my account manager, but he now tells me I have to  
18 contact you directly."

19 A Yes.

20 Q Is that communication from Kevin Mulleady why you were  
21 e-mailing Mr. Shkreli directly?

22 A Yes.

23 Q So then the next paragraph you write, "As I hope you are  
24 aware, I'm an LP in the MSMB Healthcare fund. I was actually  
25 the client that wired in money on a days' notice when your

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1 organization was in a tight spot. Per my conversation with  
2 Kevin Mulleady, my account value was approximately \$280,000,  
3 which was toward the end of last year." Do you see that?

4 A Yes.

5 Q All of that is true?

6 A Yes.

7 Q Do you recall when this most recent conversation with  
8 Kevin Mulleady about the \$280,000 was?

9 A I don't remember when I spoke to him directly, no.

10 Q Then you go on to write, "Retrophin has gone up in value  
11 substantially since then. I'm aware that our hedge fund,  
12 which funded Retrophin directly, should benefit directly  
13 because of this." Do you see that?

14 A Yes.

15 Q What did you mean?

16 A Well, it was my understanding through Kevin that my  
17 account balance, the 280,000, was from the year before towards  
18 the end of 2012. And now we were into 2013 and that I had  
19 assumed that, mostly through Martin's e-mail, that you know  
20 Retrophin was doing well and that a lot of the money that was  
21 MSMB had gone to Retrophin. But at any rate, I didn't know  
22 the exact, I didn't have an exact understanding of where the  
23 money was. But I just knew that from what Martin was saying  
24 mostly was that everything was going very well.

25 Q Then you write, "I'm also aware that you manage both

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1 companies, which seems to me to be a conflict of interest, if  
2 our hedge fund doesn't benefit directly from Retrophin when it  
3 helps fund it." Do you see that?

4 A Yes.

5 Q What do you mean by conflict of interest?

6 A Well, he was the CEO of both, both companies.

7 Q Then you wrote, "My position in MSMB was supposed to be  
8 transitioned into shares of Retrophin but I can never get a  
9 straight answer as to how or when this is supposed to happen."  
10 Do you see that?

11 A Yes.

12 Q So when you wrote that your position at MSMB was supposed  
13 to be transitioned into shares of Retrophin, where did that  
14 understanding come from?

15 A Well, the understanding came from, I don't remember  
16 exactly, but in speaking with Kevin Mulleady and it was my  
17 understanding that the easiest way to get my money out was  
18 through stock in Retrophin. But what I originally wanted was  
19 cash. But it sounded like I wasn't going to be able to get  
20 cash at this point.

21 Q Had you agreed at any point to transition your investment  
22 at MSMB into Retrophin shares?

23 A No.

24 Q Did anyone ever offer you any sort of exchange agreement  
25 or document to exchange your MSMB investment into Retrophin?

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1 A No.

2 Q Then in the last paragraph you write, "Based on this  
3 information I potentially will exercise my rights to weekly  
4 redemption, side letter, signed by you." Do you see that?

5 A Yes.

6 Q Is that the side letter we looked at earlier?

7 A Yes.

8 Q The May 1st, 2012, letter?

9 A Yes.

10 Q Then you write, "As this is a formal request, I have CCed  
11 your attorney Evan Greebel and my attorney Jim Burke." Do you  
12 see that?

13 A Yes.

14 Q Is that why you had CCed Evan Greebel and Jim Burke?

15 A Yes.

16 Q If we go back to the first page, we'll read Mr. Shkreli's  
17 response. So this is about a third of the way down the page.  
18 There is an e-mail from Martin Shkreli, March 11, 2013, to  
19 Richard Kocher, CC Evan Greebel, do you see that?

20 A Yes.

21 Q Martin writes, "Hi, Richard. We're just acknowledging  
22 receipt. We'll get back to you within 24 hours. I need your  
23 mailing address if you have that handy." Do you see that?

24 A Yes.

25 Q Did Mr. Shkreli ever tell you that you were wrong and



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1 that Evan Greebel was not his attorney?

2 MR. DUBIN: Objection, your Honor.

3 THE COURT: I'm going to sustain the objection.

4 Q In the previous e-mail you had written that you were  
5 CCing Evan Greebel, and you referred to him as "your attorney"  
6 to Mr. Shkreli?

7 A Yes.

8 Q Did Mr. Shkreli ever tell that you Evan Greebel was not  
9 his attorney?

10 MR. DUBIN: Objection, your Honor.

11 THE COURT: Overruled.

12 MR. KESSLER: Can I have the reporter read back the  
13 last question?

14 (Whereupon, the record was read.)

15 A No.

16 Q If we move up one e-mail, this is now March 12, an e-mail  
17 from you to Mr. Shkreli copying the people who are copied in  
18 the first e-mail, you wrote, "Hi, Martin. Well, it's been  
19 over 24 hours since you said you would get back to me. I  
20 called again without a response. I've already sent you my  
21 address, but asking for wiring instructions would be more  
22 appropriate."

23 A Yes.

24 Q Why did you say that asking for wiring instructions would  
25 be more appropriate?

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1 A Well, what I'm saying here is, you know, that it had been  
2 way overdue for me to get back, and that I was hoping they  
3 were going to wire cash to me.

4 Q Mr. Shkreli writes back in the next e-mail, "We are  
5 distributing the funds holdings to you. You should receive a  
6 stock certificate this week." Do you see that?

7 A Yes.

8 Q So what did you understand would be the portion of the  
9 funds holding that was distributed to you?

10 A Well, at that time I was hoping that, you know, my  
11 200,000 had become, you know, what he had said earlier, almost  
12 double. But I had expected, like I had said previously, that  
13 it to be in cash not in the stock. But at this point that's  
14 what they are offering me.

15 Q Then if we look at the top e-mail, March 12, 2013, from  
16 you; is that right?

17 A Yes.

18 Q You write, "My last account value was \$280,000 and it was  
19 in a diversified health care portfolio MSMB, which was net  
20 neutral." Do you see that?

21 A Yes.

22 Q What did you mean by that?

23 A Well, that it was supposed be a diversified health care  
24 portfolio. And that meant that, you know, that's where my  
25 money had been. And I expected there to be, you know, a value

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1 in that. And, you know, hopefully I was going to get paid  
2 back the value.

3 Q What did you mean by net neutral?

4 A Well, it was really a phrase that I picked up from, you  
5 know, somewhere where MSMB said they were net neutral.

6 Q In the next sentence you wrote, "If my redemption is in  
7 Retrophin shares, which are thinly traded, then I would assume  
8 my account value would be higher to compensate for  
9 illiquidity." Do you see that?

10 A Yes.

11 Q Why did you believe that Retrophin shares were thinly  
12 traded and your account should be higher?

13 A If you have a thinly traded stock, it means that there is  
14 not much stock on the market. If you put a lot of stock into  
15 the market to sell -- if there is only a few thousand shares  
16 sold each day and you put in four or 5,000 shares, then all of  
17 a sudden if the share value is \$5 it can go down to \$3 because  
18 you don't have buyers.

19 Q So if you sell a lot of thinly traded of stock at once it  
20 lowers the pricer?

21 A It lowers the price because there are no buyers, yes.  
22 It's basically if there is no demand then your value goes  
23 down.

24 Q From your own experience can you give us an example of  
25 what would not be a thinly traded stock?

R. KOCHER - DIRECT - MR. KESSLER

1 A Well, Apple, IBM.

2 Q So you're comparing Retrophin stock to something like  
3 Apple or IBM stock?

4 A Well, there is a big difference.

5 Q In this e-mail where you write that your last account  
6 value was \$280,000 in a diversified healthcare portfolio, did  
7 you copy Mr. Greebel?

8 A Yes, I did.

9 MR. KESSLER: Your Honor, is now a good time for  
10 lunch?

11 THE COURT: Yes. Why don't we take a break. Would  
12 the jurors have any difficulty returning at 2:10 from lunch,  
13 say little over an hour?

14 Please don't discuss the case and keep an open mind.  
15 Thank you.

16 (Jury exits the courtroom. 1:10 p.m.)

17 (Whereupon, the witness steps down.)

18 THE COURT: Okay is there anything I need to do or  
19 should resolve during the lunch break?

20 MR. BRODSKY: One question, one application with  
21 respect to the elicitation from Mr. Kocher that expenses were  
22 used. They asked Mr. Kocher whether he expected his money to  
23 be used in a certain way.

24 If the Government is going to elicit evidence that  
25 Martin Shkreli misused MSMB investor money for Starbucks and

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R. KOCHER - DIRECT - MR. KESSLER

1 for other things, that's beyond the scope of even background  
2 to the alleged charged conspiracy in Count Seven and Eight,  
3 that is really Counts One through Six. And we just wanted to  
4 make sure that there is not going to be evidence being  
5 elicited about Martin Shkreli's use of MSMB money on all sorts  
6 of things.

7 MR. KESSLER: Absolutely not through this witness.  
8 And in general, we do not intend to elicit evidence about if  
9 Martin Shkreli was using his bank account to buy tickets or  
10 something or pay his rent.

11 MR. BRODSKY: Thank you.

12 THE COURT: Okay. May I just bring to the party's  
13 attention one other issue. I mentioned this yesterday, I'm  
14 hoping this won't become an issue but on the 29th, 30, 1st of  
15 December -- the 29th of November and 30th of November and 1st  
16 of December I have a judicial counsel meeting out of state.  
17 I'm not going to be able to sit those three days.

18 I haven't raised this yet with the jury, because  
19 they really think they will be finished before Thanksgiving.  
20 We can cross that bridge at some point.

21 We had also a number of jurors, as you may recall  
22 during voir dire, who said they are not available at various  
23 points around the Thanksgiving holiday, some said not after.  
24 Just please bear that in mind.

25 MR. KESSLER: Thank you.

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R. KOCHER - DIRECT - MR. KESSLER  
THE COURT: All right.

(Continued following page.)

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1 A F T E R N O O N S E S S I O N

2 (In open court.)

3 THE COURT: Are there any issues that I should  
4 resolve before we bring the jury back?

5 MR. KESSLER: No.

6 THE COURT: Okay.

7 MR. KESSLER: Should we put the witness back on the  
8 stand?

9 THE COURT: Sure. Thank you.

10 (Pause.)

11 (Jury enters.)

12 THE COURT: All right. All our jurors are present.  
13 Please have a seat, everybody.

14 Mr. Kocher, you are still under oath, sir.

15 THE WITNESS: Yes.

16 THE COURT: You may resume your direct, Mr. Kessler.

17 DIRECT EXAMINATION

18 MR. KESSLER: Thank you.

19 BY MR. KESSLER (continuing):

20 Q Mr. Kocher, before the break we were talking about  
21 Government Exhibit 104-5A, the March 12 e-mail chain from you  
22 to Martin Shkreli and Evan Greebel and others.

23 A Yes.

24 Q After March 12, 2013, did you receive stock from  
25 Mr. Shkreli?

Kocher - Direct/Kessler

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1 A Did I receive a document?

2 Q Stock, shares.

3 A Oh, stock. Yes, I did.

4 Q Okay. Were those shares in Retrophin?

5 A Yes, they were.

6 Q Okay. If you take a look at the next tab in your binder,  
7 which is tab ten of Government Exhibit 104-7.

8 MR. KESSLER: Show that to the witness.

9 A Yes.

10 Q This is an e-mail from Martin Shkreli to you on Thursday,  
11 March 14, 2013?

12 A Yes.

13 Q It's a day or two after the e-mail chain we just looked  
14 at; is that right?

15 A Yes.

16 Q Does this e-mail discuss the shares of stock that you  
17 were to receive?

18 A Yes.

19 MR. KESSLER: I offer Government Exhibit 104-7.

20 MR. BRODSKY: No objection, Your Honor.

21 THE COURT: We receive 104-7.

22 (Government Exhibit 104-7, was received in  
23 evidence.)

24 Q Mr. Kocher, in the bottom e-mail -- I'm sorry. Strike  
25 that.



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1           Let's talk about the top e-mail. In the top e-mail  
2 Mr. Shkreli informs you that you are going to receive 23,654  
3 shares; is that correct?

4 A     That's correct.

5 Q     Did you, in fact, receive a certificate for that many  
6 shares?

7 A     After this, yes.

8 Q     Were those shares restricted or unrestricted?

9 A     They were restricted.

10 Q    Do you understand the difference between restricted and  
11 unrestricted stock?

12 A    I found out pretty quickly then.

13 Q    What's the difference?

14 A    Restricted stock you can't sell or do anything with.

15 Q    Were you satisfied at that point that your investment in  
16 MSMB Healthcare LP had been fully redeemed?

17 A    No, not at all.

18 Q    Did you continue e-mail communications with Mr. Shkreli?

19 A    Yes.

20 Q    So take a look at the next tab in your binder.

21           MR. KESSLER: And if we can show just the witness  
22 Government Exhibit 104-9.

23 Q    So, Mr. Kocher, is this an e-mail chain from Martin  
24 Shkreli to you and others on March 15, 2013?

25 A    Yes.

Kocher - Direct/Kessler

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1 MR. DUBIN: He might have misread that, who it's  
2 from.

3 MR. KESSLER: From Mr. Shkreli to Mr. Kocher and  
4 others.

5 Q Do you know, the e-mail below it --

6 THE COURT: I'm sorry. I didn't hear anything  
7 that -- what was going on there? What was the problem?

8 MR. DUBIN: Go ahead.

9 MR. KESSLER: I will just rephrase the question so  
10 everyone is on the same page.

11 BY MR. KESSLER:

12 Q So, Mr. Kocher, is this an e-mail chain from Martin  
13 Shkreli to you and others dated March 15, 2013?

14 A Yes.

15 Q Does this e-mail chain reflect your further efforts to  
16 receive a redemption for your MSMB Healthcare LP investment?

17 A Yes.

18 Q Is this the day after that e-mail we just looked at about  
19 your shares of restricted stock?

20 A Yes.

21 MR. KESSLER: I offer Government Exhibit 104-9.

22 MR. DUBIN: No objection.

23 THE COURT: We will receive 104-9.

24 (Government Exhibit 104-9, was received in  
25 evidence.)

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1 Q So, Mr. Kocher, I was talking about the top e-mail, which  
2 is from Martin Shkreli to you; and then Evan Greebel and some  
3 other people.

4 Do you see that?

5 A Yes.

6 Q We will come back to that, but let's start with the  
7 bottom e-mail.

8 This bottom e-mail is from you to Mr. Shkreli,  
9 right?

10 A Yes.

11 Q All right. And you copied Jim@attorneyburke.com, your  
12 wife, and Kevin Mulleady; is that correct?

13 A That's correct.

14 Q So I want to read some parts of this, the top paragraph  
15 in this e-mail. In the middle, starting on the second  
16 sentence, you write to Martin, or to Mr. Shkreli, I have  
17 counted on what your memo back in September said, that we  
18 would be taken care of before the end of the year and that we  
19 would be able to be taken out in cash or in stock, our choice.  
20 For some reason you are giving me Retrophin stock that is not  
21 tradeable and is worth around a quarter of what I am owed, and  
22 now you are going to somehow compensate for it later.

23 Do you see those sentences?

24 A Yes.

25 Q Is that a reference to the restricted stock you

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1 previously received?

2 A That's correct.

3 Q All right. Then, two sentences later, you write, I  
4 expect to get, in addition to this insulting untradable stock,  
5 at least \$200,000, which you owe me in cash, wired to my  
6 account by early next week. I have already been in touch with  
7 counsel that is versed in this type of litigation.

8 Do you see that?

9 A Yes.

10 Q Had you been in touch with an attorney at this point?

11 A I believe so. I don't remember specifically when, but I  
12 got a hold of David Trachtenberg, who is attorney in the city.

13 Q Is that David Trachtenberg?

14 A Trachtenberg, yes. Sorry.

15 Q Had you got in touch with him at around the time of this  
16 e-mail?

17 A Yes.

18 Q One sentence later, you said, I have damages that have  
19 occurred because I have been relying on what you represented  
20 as the manager of MSMB.

21 Do you see that?

22 A Yes.

23 Q What were your damages?

24 A Well, I had been in contract on two properties. By this  
25 time I believe I closed on one of them, but I had to basically

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1 secure funds from other places. In other words, I had to  
2 borrow money from other people and raise money in other ways  
3 than using my own money; and so, it, you know, caused me to  
4 dilute my stake in some real estate.

5 Q In the next sentence you write, I also believe that as a  
6 manager of MSMB and CEO of Retrophin that you have not lived  
7 up to your fiduciary responsibilities to me as an LP and that  
8 I will require a full accounting of both MSMB, Retrophin, and  
9 your financial involvement. Do you see that?

10 A Yes.

11 Q What did you mean by "require a full accounting"?

12 A Well, I never seen really much accounting of where my  
13 money had gone to start with. It was never really clear, and  
14 it was pretty sketchy in terms of the reports that I got from  
15 MSMB. They came late and they were -- only covered certain  
16 months.

17 So, you know, essentially, I was in the dark with  
18 what the funds' holdings were, what my account balance was,  
19 et cetera.

20 Q All right. Then in the next sentence you say, also, I  
21 will make sure that this does go public and will also go to  
22 the appropriate agencies.

23 Do you see that?

24 A Yes.

25 Q Why did you write that?

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1 A Well, I wanted him to settle, and I was basically  
2 threatening him with going public because I felt like it was  
3 kind of obvious that there wasn't any regular accounting that  
4 had been done, at least that I had seen.

5 Q Right. And then, the rest of this page, the text is  
6 pushed up against the paragraph that we just have been looking  
7 at; but is the rest of this page and the next page that same  
8 September 2012 e-mail we previously looked at, where  
9 Mr. Shkreli discusses his plans to wind down the hedge funds?

10 A Yes.

11 Q The e-mail in which he said that Retrophin has a full  
12 pipeline and several marketed cash-generating products?

13 A Yes.

14 Q And the e-mail in which he said you could get your cash  
15 investment back in cash or stock?

16 A Yes, and he is also saying Retrophin is modestly valued;  
17 and, you know, he is, you know, bragging about how good the  
18 company is and the companies that he has invested in.

19 Q All right. So then if we go to the top e-mail,  
20 Mr. Shkreli responds to your e-mail, which is included in his  
21 response.

22 Do you see that?

23 A Yes.

24 Q So all the text on this page is Mr. Shkreli's response to  
25 you, correct?

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2700

1 A Yes.

2 Q So Mr. Shkreli writes back to you, Jim@attorneyburke.com,  
3 your wife, Evan Greebel, and then somebody named Howard  
4 Cotton.

5 Do you see that?

6 A Yes.

7 Q Do you know who Howard Cotton is?

8 A No.

9 Q Mr. Shkreli writes, I called your office. You can call  
10 me with or without counsel, at your convenience; and then a  
11 little bit later he says, cc'ing my attorney.

12 Do you see that?

13 A Yes.

14 Q All right. Did you then engage in a series of e-mails  
15 with Mr. Shkreli where you continued to ask for a greater  
16 redemption from your investment?

17 A Yes.

18 Q So if you turn to tab 12 in your binder.

19 MR. KESSLER: And I'm showing the witness Government  
20 104-16.

21 Q Do you see that, Mr. Kocher?

22 A Yes.

23 Q This is a series of e-mails between March 21, 2013 at the  
24 beginning and March 28, 2013 at the end, between you and  
25 Mr. Shkreli.

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1 A Yes.

2 Q Are these e-mails about your efforts to redeem your  
3 investment in MSMB Healthcare?

4 A Yes.

5 MR. KESSLER: I offer Government Exhibit 104-16.

6 MR. DUBIN: No objection.

7 THE COURT: Received 104-16.

8 (Government Exhibit 104-16, was received in  
9 evidence.)

10 Q So I want to start with the second page of the document,  
11 the Bates stamp ending 993.

12 A Okay.

13 Q So this is a March 26 e-mail from you to Mr. Shkreli, and  
14 you have copied David G. Trachtenberg.

15 Do you see that?

16 A Yes.

17 Q Is that the lawyer you mentioned to us before?

18 A Yes.

19 Q And in the second sentence in this e-mail you write, I  
20 appreciate that you apologize for not being professional about  
21 how I have been treated.

22 Do you see that?

23 A Yes.

24 Q Was that in reference to an e-mail communication or a  
25 phone conversation you had with Mr. Shkreli?



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2702

1 A That was a phone conversation.

2 Q All right. Then, about halfway down the page, you write,  
3 because I have not been able to get my redemption from you, I  
4 have had to get out of other lucrative investments, and I'm  
5 now risking not being able to live up to my contractual  
6 obligations because I have not been able to get my account  
7 with you.

8 Do you see that?

9 A Yes.

10 Q Is that the same financial obligation you described to us  
11 before?

12 A Yes.

13 Q The next e-mail up Mr. Shkreli writes back to you, and he  
14 writes, definitely nice to talk to you finally.

15 Do you see that?

16 A Yes.

17 Q Had you had a phone conversation with Mr. Shkreli about  
18 your MSMB Healthcare investment before approximately March 26,  
19 2013?

20 A Not that I remember.

21 Q Had you had an in-person conversation with him about your  
22 MSMB Healthcare investment before approximately March 26,  
23 2013?

24 A No.

25 Q Who had you talked to about your MSMB Healthcare

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1 investment, who worked at or worked for that fund?

2 A Almost exclusively Kevin Mulleady.

3 Q Then one sentence later, in this e-mail on March 26,  
4 Mr. Shkreli writes, Evan Greebel, who is an attorney, will be  
5 helpful to speak with, if I'm not available.

6 Do you see that?

7 A Yes.

8 Q Then, if we follow the chain up to the next page, some  
9 back and forth, so if we go to the first page of the  
10 document --

11 A I'm sorry. Where is this?

12 Q So go to the first page of the document.

13 A Okay.

14 Q The second e-mail from the bottom, March 27, 2013,  
15 Mr. Shkreli and you write, hi, Martin. Please find -- I don't  
16 want to go --

17 THE COURT: Start over.

18 Q This is a March 27 e-mail from you to Mr. Shkreli; is  
19 that right?

20 A Yes.

21 Q You write, hi, Martin. Please finalize this deal  
22 tomorrow. I don't want to get my attorney involved, but I  
23 won't have a choice if you don't get back to me. All we have  
24 to do is agree on the terms and how we are going to finalize  
25 them.

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2704

1 Do you see that?

2 A Yes.

3 Q So had you gotten an attorney involved at this point?

4 A I don't remember the exact time when I retained David  
5 Trachtenberg, but it was sometime around that time.

6 Q All right. Then if we move up to the second e-mail from  
7 the top. It's a March 27, 2013 e-mail at 9:02 p.m.

8 Do you see that?

9 A Yes, uh-huh.

10 Q Mr. Shkreli says, let's do a call with my attorney.

11 Do you see that?

12 A Yes.

13 Q Did you have an understanding of who he meant when he  
14 said "my attorney"?

15 A I thought it was Evan Greebel, because he was the only  
16 attorney that I knew Martin had at the time.

17 Q Did you in fact have a call with Evan Greebel on  
18 approximately March 27, 2013?

19 A I don't specifically remember that. He might have been  
20 on the phone when I talked to Martin, but I don't remember.

21 Q All right. So if you can put this e-mail away.

22 You can turn your binder to tab 13.

23 MR. KESSLER: Show the witness Government  
24 Exhibit 104-18.

25 Q Is this another e-mail chain between you and Mr. Shkreli

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1 about your efforts to redeem your investment?

2 A Yes.

3 Q It's a chain between March 31 and April 3rd, 2013?

4 A Yes.

5 MR. KESSLER: I offer Government Exhibit 104-18?

6 MR. DUBIN: No objection.

7 THE COURT: We receive 104-18.

8 (Government Exhibit 104-18, was received in  
9 evidence.)

10 Q So, Mr. Kocher, if we look at the e-mail that's second  
11 from the top, with the most text, this is a Wednesday,  
12 April 3, e-mail from you to Mr. Shkreli?

13 A Uh-huh.

14 Q You write, Martin, now we are going on another two weeks  
15 and again you are putting me in a bad situation. If I don't  
16 see an agreement from you by tomorrow then the deal we have  
17 agreed to will be off and I will be forced to have you deal  
18 with my lawyer.

19 Do you see that?

20 A Yes.

21 Q What did you mean when you wrote "I will be forced to  
22 have you deal with my lawyer"?

23 A Well, what I meant was that I was going to have him have  
24 to deal with my lawyer directly in terms of reaching any  
25 agreement and that I would let my lawyer handle it, so that I

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1 would no longer be maybe the person negotiating it.

2 Q Mr. Shkreli writes back in the top e-mail, is he running  
3 the company? I will send today. I don't know what Kevin told  
4 you, but it's not happening.

5 Do you see that?

6 A Yes.

7 Q Do you recall whether Mr. Shkreli in fact sent you an  
8 agreement that day, on April 3rd?

9 A I don't think he did, but he might have; but I know he  
10 sent me one -- the first agreement he sent me didn't seem like  
11 it was going to work at all for me.

12 Q All right. If you turn to tab 14 in your binder.

13 MR. KESSLER: We can show the witness Government  
14 Exhibit 104-19.

15 Q Mr. Kocher, is this an e-mail from Martin Shkreli to you  
16 on April 3rd, 2013, the same day as that previous e-mail?

17 A Yes.

18 Q The subject is forward settlement and release agreement.

19 Do you see that?

20 A Yes.

21 Q There is an attachment called form settlement and release  
22 agreement?

23 A Yes.

24 MR. KESSLER: I offer Government Exhibit 104-19?

25 MR. DUBIN: No objection.

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1 THE COURT: We receive 104-19.

2 (Government Exhibit 104-19, was received in  
3 evidence.)

4 MR. KESSLER: You can just blow up the top of that  
5 first page.

6 Q So, Mr. Kocher, the attachment, as I just said, has some  
7 numbers and letters; and then the title is form settlement and  
8 release agreement dot-doc.

9 Do you see that?

10 A Yes.

11 Q Did you have any understanding of what form settlement  
12 and release agreement meant?

13 A No.

14 Q Mr. Shkreli writes, this is the first draft of the  
15 settlement.

16 Do you see that?

17 A Yes.

18 Q So if you turn the page, we will look at the attachment.  
19 This is a document entitled settlement and release agreement.

20 Do you see that?

21 A Yes.

22 Q In the upper right-hand corner, can you read what's  
23 written above the title?

24 A Katten draft, 4/2/13.

25 Q Katten draft, 4/2/13?

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1 A Yes.

2 Q Did you have an understanding what Katten was?

3 A No.

4 Q Then, in the first paragraph, there is a description of a  
5 number of parties to the agreement.

6 Do you see that?

7 A Yes.

8 Q There are also some blank spaces to be filled in?

9 A Yes.

10 Q One of the parties in the third line is MSMB Capital  
11 Management LP.

12 Do you see that?

13 A Yes.

14 Q Then there is MSMB Capital Management LLC?

15 A Yes.

16 Q Then MSMB Healthcare LP and MSMB Healthcare Investors  
17 LLC?

18 A Uh-huh.

19 Q Did you have any idea what MSMB Capital Management LP or  
20 Capital Management LLC were?

21 A No. No. I really thought MSMB was one company. I  
22 didn't really realize until I got this that there was all  
23 these different companies.

24 Q All right. If we scroll down, there are a number of -- I  
25 will call them paragraphs that begin with whereas.

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1 Do you see those?

2 A Yes.

3 Q In the middle of the page.

4 Do any of these whereas clauses describe your  
5 investment in MSMB Healthcare LP?

6 A I don't believe so. The thing was they had all these  
7 different companies; and I wasn't really clear as to, you  
8 know, where -- where my investment actually laid, lie, you  
9 know.

10 Q All right. So after you received this draft settlement  
11 agreement did you ask your lawyer to review it?

12 A Yes.

13 Q And did he have communications with Mr. Shkreli or an  
14 attorney for Mr. Shkreli?

15 A Yes.

16 Q So if you turn to tab 15 in your binder --

17 MR. KESSLER: Which is Government Exhibit 104-20 for  
18 the witness.

19 Q Mr. Kocher, is this an e-mail chain or an e-mail you sent  
20 to Martin Shkreli on April 9 about the settlement agreement?

21 A Yes.

22 MR. KESSLER: I offer Government Exhibit 104-20?

23 MR. DUBIN: No objection.

24 THE COURT: We receive 104-20.

25 (Government Exhibit 104-20, was received in



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1 evidence.)

2 Q Mr. Kocher, on April 9 you wrote, Hi, Martin. The  
3 settlement agreement needs to be changed to fit both of our  
4 needs, but my attorney has been in contact with your attorney  
5 about the details.

6 Do you see that?

7 A Yes.

8 Q What needed to be changed about the settlement agreement?

9 A I don't remember specifically, but I know that the way it  
10 was written was not really protecting me, and the terms  
11 weren't clear either.

12 Q All right. Did you expect that your attorney would  
13 communicate with Mr. Shkreli or his attorney about those  
14 terms?

15 A Yes.

16 Q Okay. Were you aware that there were additional drafts  
17 of this agreement that were circulated?

18 A Yes.

19 Q So if we -- if you can turn in your binder to tab 16 --

20 MR. KESSLER: Which is for the witness, Government  
21 Exhibit 104-21.

22 Q Mr. Kocher, you see this is an e-mail from Evan Greebel,  
23 David Trachtenberg, copy to Martin Shkreli?

24 A Yes.

25 Q It's also bcc'd to Evan Greebel?

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1 A Yes.

2 Q Subject is draft settlement agreement, and there is a  
3 draft edited settlement agreement that's attached?

4 A Yes.

5 MR. KESSLER: I offer Government Exhibit 104-21.

6 MR. PITLUCK: No objection.

7 THE COURT: We receive 104-21.

8 (Government Exhibit 104-21, was received in  
9 evidence.)

10 Q All right. Mr. Kocher, so in this cover e-mail  
11 Mr. Greebel writes, Hi, David. Attached is a draft of the  
12 settlement agreement. I am simultaneously sending it to my  
13 client, and it is subject to his review and comment.

14 Do you see that?

15 A Yes.

16 Q So let's turn the page and look at the draft.

17 Does this appear to be similar in format to the  
18 draft we looked at before?

19 A Yes.

20 Q In the upper right-hand corner there is, Katten draft  
21 5/8/13?

22 A Yes.

23 Q If we scroll down to the bottom, there are payment terms?

24 A Yes.

25 Q The payment terms have been filled in here; is that

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1 right?

2 A That's correct.

3 Q And the first sentence of the payment terms reads, The  
4 MSMB entities, or Retrophin, individually or collectively, the  
5 payor, agree to deliver or cause to be delivered to releasor  
6 the total amount of \$123,711, to be cash payment, and Shkreli  
7 agrees to deliver or cause to be delivered to the releasor the  
8 total amount of 47,128 shares of common stock.

9 Do you see that?

10 A Yes.

11 Q So does this reflect that your payment for your  
12 investment would have two components?

13 A Yes.

14 Q Who was supposed to pay the cash portion of the  
15 component?

16 A Well, I believed it to be MSMB. I mean, it was Martin,  
17 but, you know, he was representing so many different entities  
18 that I wasn't really sure.

19 Q Well, had you invested any money directly in Retrophin?

20 A No.

21 Q Did you believe Retrophin owed you any money?

22 A No.

23 Q And who in this agreement was supposed to give you stock?

24 A Again, Martin.

25 Q Now, if you turn to the second-to-last page of the

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2713

1 agreement, there is a signature area. So this is the page --  
2 the very bottom Bates stamp ends R128324.

3 Do you see that?

4 A Yes.

5 Q On the right side there are a number of places for  
6 signatures from different entities.

7 Do you see that?

8 A Yes.

9 Q Retrophin, MSMB Capital, in a couple of forms, MSMB  
10 Healthcare in a couple of forms.

11 Do you see that?

12 A Yes.

13 Q On the left side there is a signature block for Michael  
14 Lavelle.

15 Do you see that?

16 A Yes.

17 Q Do you know who Michael Lavelle is?

18 A No.

19 Q Do you know why Michael Lavelle is in a draft settlement  
20 agreement that Evan Greebel sent to your lawyer?

21 A No.

22 Q Now, did you ultimately sign a version of this  
23 settlement?

24 A Yes.

25 Q Was this after some additional revisions between your

Kocher - Direct/Kessler

2714

1 lawyer and Mr. Shkreli or attorneys working with him?

2 A Yes.

3 Q Turn to tab 18 in your binder?

4 MR. KESSLER: For the witness, Government  
5 Exhibit 54.

6 Q So, Mr. Kocher, is this an e-mail from Mr. Greebel to  
7 your attorney on May 14?

8 A Yes.

9 Q It's attaching an executed settlement agreement.

10 Do you see that?

11 A Yes.

12 Q Executed means signed?

13 A Yes.

14 MR. KESSLER: All right. I offer Government  
15 Exhibit 54.

16 MR. DUBIN: No objection.

17 THE COURT: All right. This is standalone  
18 government 54 not 104-dash, correct?

19 MR. KESSLER: That is correct. This is simply  
20 Government Exhibit 54.

21 THE COURT: All right. Thank you. We will receive  
22 Government Exhibit 54 in evidence.

23 (Government Exhibit 54, was received in evidence.)

24 Q So, Mr. Kocher, if you turn to the second page.

25 Is this the settlement agreement that you did

Kocher - Direct/Kessler

2715

1 ultimately sign?

2 A Yes.

3 Q Again, it's similar in form to the drafts that we have  
4 looked at; is that right?

5 A Yes.

6 Q In the first sentence there is now a date of May 13,  
7 2013.

8 Do you see that?

9 A Yes.

10 Q Is that approximately when you signed the settlement  
11 agreement?

12 A Yes.

13 Q All right. There is the same array of different parties  
14 to the agreement in the first paragraph?

15 A Yes.

16 Q There are the same whereas clauses that we looked at  
17 before?

18 A Yes.

19 Q Is there a whereas clause that describes your investment  
20 in MSMB Healthcare LP?

21 A Not specifically.

22 Q If we look at the payment terms, are those the same  
23 payment terms we looked at before?

24 A Yes.

25 Q If you turn to the second page of the settlement

Kocher - Direct/Kessler

2716

1 agreement, the third page of the document, at the bottom there  
2 is a section called release.

3 Do you see that?

4 A Yes.

5 Q It's a long sentence, but, in the middle, the releasor,  
6 is that you?

7 A Yes.

8 Q The releasor fully and expressly, knowingly, voluntarily,  
9 and unconditionally releases, acquits, and forever discharges  
10 Shkreli, Retrophin, each MSMB entity, and each of their  
11 officers, directors, shareholders, partners, members,  
12 managers, owner, employees, representatives, consultants,  
13 contractors, subcontractors, suppliers, attorneys, insurers,  
14 affiliates, and affiliated corporations, and so on.

15 Do you see that?

16 A Yes.

17 Q So among the other entities you were releasing in this  
18 release was Retrophin; is that right?

19 A Yes.

20 Q Did you have a claim against Retrophin?

21 A No.

22 MR. DUBIN: Objection, Your Honor.

23 THE COURT: Overruled.

24 A No.

25 Q I will ask again: Did you have a claim against

Kocher - Direct/Kessler

2717

1 Retrophin?

2 A No.

3 Q Had you ever threatened to sue Retrophin?

4 A No.

5 Q Had you ever directed your lawyer to sue Retrophin?

6 A No.

7 MR. DUBIN: Objection.

8 THE COURT: Overruled.

9 Q Go to the next page, page 3 of the document. In the  
10 middle of the page there is a section seven that says  
11 authority. It reads, The individuals signing below, on the  
12 part of the parties, warrant and represent that they are  
13 legally competent and have full authority to enter into this  
14 agreement and to bind the parties.

15 Do you see that?

16 A Yes.

17 Q Did you have any reason to believe that wasn't true with  
18 respect to any of the parties to this agreement?

19 A No.

20 Q Then if we go to the second-to-last page. It ends in  
21 Bates stamp 1261. There are two signatures there for MSMB  
22 Healthcare Investors LLC and MSMB Healthcare management LLC.

23 A Yes.

24 Q Who has signed on behalf of each of those entities?

25 A Martin Shkreli.



Kocher - Direct/Kessler

2718

1 Q If you go to the next page, a number of additional  
2 signatures on the right-hand side.

3 Do you see that?

4 A Yes.

5 Q Are those all Martin Shkreli?

6 A Yes.

7 Q Martin Shkreli individually?

8 A Yes.

9 Q Then Martin Shkreli for Retrophin, MSMB Capital  
10 Management LLC, MSMB Capital Management LP, and MSMB  
11 Healthcare LP?

12 A Yes.

13 Q On the left side, is that your signature?

14 A Yes.

15 Q So Michael Lavelle has been removed from this agreement?

16 A Yes.

17 Q Now, after you signed this settlement agreement did you  
18 get the \$120,000 that the agreement said you would get?

19 A Yes.

20 Q Did you also receive the 47,128 shares of stock?

21 A Yes.

22 Q Were those restricted or unrestricted shares?

23 A Unrestricted.

24 Q Did you know where they came from?

25 A No, not specifically. I knew it was Retrophin stock.

Kocher - Direct/Kessler

2719

1 Q Did you know how the Retrophin stock had been obtained so  
2 that it could be given to you?

3 A No.

4 Q Now, did you sell your 47,000 Retrophin shares?

5 A Yes.

6 Q How did you do that?

7 A Very slowly.

8 Q Why did you do it very slowly?

9 A Because it was very thinly traded. So basically you  
10 couldn't sell more than a couple thousand shares a week or  
11 every two weeks without affecting the stock price and having  
12 it go down.

13 Q Sitting here today, do you know how much money you made  
14 in selling all of those 47,000 shares?

15 A I don't know the exact number; but, I think, roughly, if  
16 you include the cash that I was given, I probably ended up  
17 with roughly 350,000 from my original 200,000.

18 Q Now, did there come a time after the settlement  
19 agreements were signed that Mr. Shkreli communicated with you  
20 again about Retrophin stock?

21 A Yes. He, I think, e-mailed me at one point towards the  
22 end of the year, if I remember correctly, and asked me if I  
23 had any stock.

24 Q So if you look at tab 20 in your binder?

25 MR. KESSLER: For the witness, Government

Kocher - Direct/Kessler

2720

1 Exhibit 104-25.

2 Q Take a minute to look at that.

3 A Yes.

4 Q Is this an e-mail from Martin Shkreli to you on  
5 December 4, 2013?

6 A Yes.

7 Q The subject is RTRX.

8 Do you see that?

9 A Yes.

10 Q Is that the ticker symbol for Retrophin?

11 A Yes.

12 MR. KESSLER: I offer Government Exhibit 104-25.

13 MR. DUBIN: No objection.

14 THE COURT: We'll receive 104-25.

15 (Government Exhibit 104-25, was received in  
16 evidence.)

17 Q So in this e-mail Mr. Shkreli writes to you, Hi, Rich. I  
18 hope you are well. I just wanted to see if you were  
19 completely out of Retrophin stock or if you had some left. If  
20 you have some left, I would love to buy it from you.

21 Do you see that?

22 A Yes.

23 Q Now, on December 4, 2013, was Retrophin a public company?

24 A I assume it was.

25 Q Were its shares trading in the market?

Kocher - Cross/Dubin

2721

1 A Yes.

2 Q Do you know why Mr. Shkreli wanted to buy shares from you  
3 instead of from the market?

4 MR. DUBIN: Objection.

5 A No.

6 THE COURT: Overruled.

7 Q You don't know?

8 A No.

9 MR. KESSLER: Okay. I have no further questions.

10 Thank you, Mr. Kocher.

11 THE COURT: All right. Mr. Dubin?

12 CROSS-EXAMINATION

13 Q Good afternoon, Mr. Kocher. How are you?

14 A Good. Thank you.

15 Q Can you identify Evan Greebel in this courtroom today?

16 A No.

17 Q You have never met him before?

18 A No.

19 Q Never seen him, have you?

20 A No.

21 Q Did you ever on a single occasion say that this man, on  
22 an e-mail or on the telephone, by the way, I'm not going to  
23 sue Retrophin? You never did that, did you?

24 A No.

25 Q In fact, you never said that to Mr. Shkreli, did you?

Kocher - Cross/Dubin

2722

1 A No.

2 MR. PITLUCK: Your Honor, if I may approach the  
3 witness and Your Honor and hand you a binder, so I don't have  
4 to run back and forth.

5 THE COURT: All right. Good idea.

6 MR. DUBIN: I will give one to the government.

7 Q Mr. Kocher, we will get back to it, but when you released  
8 Retrophin, MSMB Healthcare, and the other entities in that  
9 settlement agreement you signed, you were in essence giving  
10 them your word that you -- and by your signature on that  
11 document, that you wouldn't sue them, right?

12 MR. KESSLER: Objection.

13 THE COURT: Yes. Why don't you rephrase the  
14 question, Mr. Dubin.

15 Q Sir, you understood that when you signed the settlement  
16 agreement and released Retrophin that you, after signing it,  
17 could no longer sue them, correct?

18 A Yes.

19 Q Okay. Now, we heard that while you never invested in the  
20 stock market before, or not that much.

21 Do I have that right, prior to investing --

22 A That's correct.

23 Q Your a sophisticated businessman nonetheless, are you  
24 not, sir?

25 A In some ways.

Kocher - Cross/Dubin

2723

1 Q Okay. Own multiple properties throughout New Jersey,  
2 correct?

3 A Well, I own some properties.

4 Q Some very substantial properties, yes?

5 A Well, that depends on what you call substantial.

6 Q Let's talk about the one that you sold overlooking the  
7 Hudson River.

8 A Okay.

9 Q You know the one I'm talking about?

10 A Yes.

11 Q Beautiful views, right?

12 A Yes.

13 Q Okay. You sold that for upwards of \$14 million, correct?

14 A No.

15 Q What did you sell it for?

16 A I didn't sell it. It was taken from me my by eminent  
17 domain.

18 Q When you bought it, do you remember what you bought it  
19 for?

20 A Somewhere in excess of \$3 million.

21 Q And can you explain what an eminent domain proceeding is,  
22 for the ladies and gentlemen of the jury?

23 A Eminent domain is when a city or a town or an entity  
24 that's a public entity takes private property.

25 Q They don't just take it, they pay you for it, right?

Kocher - Cross/Dubin

2724

1 A Yeah, if you -- after about ten years of litigation.

2 Q Okay. Did they pay you for it?

3 A Yes.

4 Q What did they pay you?

5 A Well, they didn't pay just me because by then I had -- I  
6 had -- I had to bring -- without going into bankruptcy, I had  
7 to bring in additional partners. So I ended up getting about  
8 \$4 million.

9 Q Okay. So and you have a business called Kocher  
10 Construction, correct?

11 A Yes.

12 Q And you build and develop both condos and commercial real  
13 estate, correct?

14 A Yes.

15 Q And you are a member of various different corporate  
16 entities, correct?

17 A Yes.

18 Q And you went to Stanford, correct?

19 A Yes.

20 Q And when Mr. Mulleady recommended Martin Shkreli to you,  
21 you trusted Mr. Mulleady's word, right?

22 A That's correct.

23 Q And he was, by all appearances, an impressive guy,  
24 Mr. Mulleady?

25 A That's correct.

Kocher - Cross/Dubin

2725

1 Q A buyer at Smith Barney?

2 A You are talking about Kevin Mulleady?

3 Q Yes.

4 A Yes.

5 MR. PITLUCK: Excuse me for one minute. I'm going  
6 to grab some water.

7 Q He was someone who your son trusted, correct?

8 A I don't think my son knew him that well.

9 Q Okay. Nonetheless, you trusted him?

10 A Yes.

11 Q Trusted his judgment, correct?

12 A Yes.

13 Q What he communicated to you about Martin Shkreli was that  
14 Martin Shkreli was a genius, correct?

15 A Yes.

16 Q And you took Mr. Mulleady at his word about that, right?

17 A Yes.

18 Q And you certainly, though you didn't meet Mr. Shkreli,  
19 you certainly had the opportunity, if you wanted, to do as  
20 much research as you wanted about him, right?

21 A I was a passive investor so I really didn't do any  
22 research.

23 Q I understand that. You didn't do any research, but  
24 nothing prevented you from doing research, correct?

25 A That's correct.



Kocher - Cross/Dubin

2726

1 Q And you knew that lawsuits are publicly filed for the  
2 most part, correct?

3 A Yes.

4 Q And you yourself have filed lawsuits in the past, haven't  
5 you?

6 A Yes.

7 Q And prior to entering these settlement discussions with  
8 Mr. Shkreli, and then Mr. Greebel is copied on some of the  
9 e-mails, you had already filed a lawsuit in the past, hadn't  
10 you, prior to that time?

11 A Yes.

12 Q And that lawsuit wasn't sealed or anything like that, it  
13 was there for the world to see, correct?

14 A Yes.

15 Q And you have no idea, do you, sir, sitting here today  
16 whether or not my client, Mr. Greebel, was aware that you had  
17 filed lawsuits in the past?

18 A Could you ask -- just say that question again?

19 Q Absolutely. At the time you entered into the settlement  
20 negotiations with Mr. Shkreli and Mr. Greebel, do you remember  
21 what time period that was, the year?

22 A 2013.

23 Q All right. Prior to 2013 you had already filed at least  
24 one lawsuit, correct?

25 A Yes.

Kocher - Cross/Dubin

2727

1 Q You had no idea whether or not Mr. Greebel had an  
2 awareness that you had filed lawsuits in the past, did you?

3 A No.

4 Q So for all you knew, from where Mr. Greebel sat you are a  
5 disgruntled investor, correct?

6 MR. KESSLER: Objection.

7 A Why would you call me disgruntled?

8 MR. PITLUCK: I will rephrase it.

9 THE COURT: Okay.

10 Q For all you knew, from where Mr. Greebel sat, you were an  
11 investor in MSMB that was not too happy, correct?

12 MR. KESSLER: Objection to what Mr. Greebel thought.

13 THE COURT: You are asking him to comment on what  
14 Mr. Greebel knew or what he sat -- how he sat at the time?

15 MR. DUBIN: I will withdraw it and rephrase it.

16 THE COURT: Okay.

17 (Continued on the next page.)

18

19

20

21

22

23

24

25

KOCHER - CROSS - DUBIN

2728

1 CROSS-EXAMINATION (Continued)

2 BY MR. DUBIN:

3 Q Mr. Kocher, at the time you began negotiating with  
4 Mr. Shkreli and then Mr. Greebel at some point is copied on  
5 some of the communications, right?

6 A Yes.

7 Q You were not a happy camper; were you?

8 A I just wanted to get my settlement.

9 Q Right.

10 A Yes.

11 Q And you expressed over and over again that your -- in  
12 words or substance -- it was apparent from the face of those  
13 emails as far as you were concerned, that your patience was  
14 wearing thin, right?

15 A That's correct.

16 Q And you felt like Mr. Shkreli was giving you the  
17 runaround, right?

18 A That's correct.

19 Q And you wanted money, right?

20 A I wanted to get my investment paid back, yes.

21 Q And at some point you said something to the effect -- and  
22 we're going to go into it on the email -- that you're the  
23 manager of MSMB and manager of Retrophin, and that seemed like  
24 a conflict of interest to me.

25 Do you recall saying that?

KOCHER - CROSS - DUBIN

2729

1 A Yes.

2 Q So here you are, someone that wanted his money, someone  
3 that was getting continually frustrated with the process and  
4 you were raising Retrophin in these emails, correct?

5 MR. KESSLER: Objection to the form.

6 THE COURT: Sustained. Rephrase, please.

7 Q Were you raising Retrophin in some of the emails when  
8 were you going back and forth and having these settlement  
9 discussions about Mr. Shkreli?

10 Did you, in fact, raise Retrophin?

11 A What do you mean by "raise Retrophin"?

12 Q Did you include in one of your emails that Mr. Shkreli  
13 seems to be involved in Retrophin, and involved in MSMB, and  
14 that, to you, was a conflict of interest, right?

15 A Yes.

16 Q All right. Now, at the risk of stating the obvious, you  
17 and I have never met, correct?

18 A That's correct.

19 Q Never spoken before; right?

20 A I'm not sure.

21 Q As far as you know, and as far as I knew, we've never  
22 spoken, correct?

23 A I did speak on the phone.

24 Q To one of my colleagues?

25 A Yes.

KOCHER - CROSS - DUBIN

2730

1 Q Do you remember him identifying himself as Mr. Halperin?

2 A No.

3 Q And isn't it a fact that he called you and asked you if  
4 you would speak to either him or a member of the defense team?

5 A Yes.

6 Q And you told him you wouldn't, right?

7 A That I wouldn't?

8 Q That you would not. You did not want to meet with us?

9 A Oh, that I didn't want to meet with you.

10 Q Right.

11 A No, but I was willing to talk.

12 Q Right. You spoke --

13 A I don't think you asked for -- I don't believe -- I don't  
14 remember being asked for a meeting.

15 Q You don't remember being asked for a meeting?

16 A That's correct.

17 Q Okay. Do you -- though you don't remember, are you  
18 saying that he definitely did not ask you to meet?

19 A I don't remember.

20 Q Okay. So is it possible that he did ask you to meet and  
21 you just can't recall?

22 A I suppose.

23 Q Nonetheless, you met with members of the Government,  
24 correct?

25 A Yes.

KOCHER - CROSS - DUBIN

2731

1 Q Some of the prosecutors sitting at this table?

2 A Yes.

3 Q Which ones?

4 A David.

5 Q Well, that narrows it down to two.

6 Do you know which David? The handsome one or the  
7 handsome one?

8 A The one that's been cross examining -- or actually --

9 Q Mr. Kessler, correct.

10 A Mr. Kessler, yes.

11 Q And were either of these special agents from the FBI at  
12 meeting?

13 A One was; yes.

14 Q The one closer to me, or was it Mr. Sweeney or  
15 Mr. Mulleady?

16 A Matt.

17 Q Matt, okay. That would be the second from the left?

18 A Yes.

19 Q Okay.

20 A That's correct.

21 Q And how many times did you meet with them to prepare for  
22 your testimony today?

23 A Once.

24 Q Okay. Once in connection with this proceeding, but one  
25 other time in connection with another proceeding, correct?

KOCHER - CROSS - DUBIN

2732

1 A I didn't -- no.

2 Q So what was your testimony, sir --

3 A I didn't meet with David at -- for another.

4 Q You met with other prosecutors, correct?

5 A Yes, I did.

6 Q And other members of the FBI?

7 A Yes.

8 Q And they asked you questions, correct?

9 A Yes.

10 Q They showed you documents, right?

11 A Yes.

12 Q And you did your best to explain those documents to them,  
13 right?

14 A Yes.

15 Q And you asked and answered any question they had,  
16 correct?

17 A Pretty much.

18 Q Do you recall how long those meetings lasted?

19 A Maybe an hour and a half.

20 Q Okay. And did you tell my colleague, Mr. Halperin, that  
21 you had already spent too much time in this case and didn't  
22 want to meet with anyone else?

23 A I may have.

24 Q Okay. But, in fact, after you spoke to him, you met with  
25 the prosecutors and the FBI again, correct?

KOCHER - CROSS - DUBIN

2733

1 A Yes, that's correct.

2 Q Okay. And do you recall that you met with them just a  
3 couple weeks ago on October 14th, correct?

4 A Yes.

5 Q So today's the first time, face-to-face, that someone on  
6 Mr. Greebel's behalf was able to ask you questions and show  
7 you some documents, correct?

8 A Yes.

9 Q And do you recall that your first meeting with the  
10 prosecutors in connection with another proceeding was back in  
11 May?

12 A I don't recall the exact time.

13 Q Let me see if I can refresh your recollection.

14 If you go into your binder -- I was ready to walk  
15 up.

16 If you go into your binder to the very first tab  
17 that's 35-RK-1, and if you just read to yourself that first  
18 sentence.

19 (Whereupon, the witness is reviewing the document.)

20 Let me know when you're ready.

21 A Yes.

22 Q Does that refresh your recollection, sir, that the first  
23 time you met with the Government was in May of this year?

24 A Yes.

25 Q Okay. And do you remember telling the Government during



KOCHER - CROSS - DUBIN

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1 that meeting that you were having trouble remembering the  
2 events at issue here?

3 A Yes.

4 Q Okay. And during that interview the Government said,  
5 well, why, in words or substance, why are you having trouble  
6 remembering?

7 Do you recall that?

8 A No, not specifically.

9 Q Do you recall telling them that the events at issue were  
10 just not of particular interest to you?

11 A I -- I probably did say that.

12 Q Okay. And when you met with the Government on  
13 October 14th, just a few weeks ago, your memory improved on  
14 some of these events, correct?

15 A Why do you say that?

16 Q Well, I'm asking you. Do you have better recollection of  
17 it?

18 I'm going to show you why I say it in a minute.

19 A Okay.

20 Q But did your memory improve?

21 A Not that I know of.

22 I don't know what you're getting at.

23 Q Okay. You seem to have better recollection of some of  
24 the events at issue because, by that point, by two and a half  
25 weeks ago, you had been shown a number of documents that had

KOCHER - CROSS - DUBIN

2735

1 these discussions with the prosecutors on two occasions, and  
2 with the FBI on two occasions, correct?

3 MR. KESSLER: Objection to the form.

4 THE COURT: Try to restate it, if you can.

5 Q Okay. Is it fair to say, Mr. Kocher, that your memory  
6 got a little bit better about the events at issue, because you  
7 had had your memory refreshed with various documents and  
8 conversations? That's what I'm getting at.

9 A Yes.

10 Q Okay. Now, do you recall that when you signed -- you  
11 were shown -- withdrawn.

12 Do you recall Mr. Kessler showing you that signed  
13 letter he referred to as a subscription agreement?

14 Do you recall that; just today?

15 A Yes.

16 Q All right. But do you recall that when you initially  
17 invested in MSMB, you signed a subscription agreement?

18 A Yes.

19 Q Okay. So I'd like you to go to Tab 2 in your binder.  
20 And it's already in evidence as Government Exhibit 33.

21 MR. DUBIN: So if you could put that up on the  
22 screen.

23 (Exhibit published.)

24 Q Okay. Now, you signed this agreement; correct?

25 MR. DUBIN: If you go to the last page.

KOCHER - CROSS - DUBIN

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1 A Yes.

2 Q You see your signature up there on the left?

3 A Yes.

4 Q All right. And that and Barbara Kocher is your wife,  
5 correct?

6 A Yes.

7 Q And by the way, did you have -- without telling me the  
8 substance of what you discussed, did you discuss this  
9 investment with your wife?

10 A Yes.

11 Q Okay. And when you signed the subscription agreement,  
12 you read it first, I assume, correct?

13 A I don't remember how thoroughly I read it, but my guess  
14 is that I might have skimmed it.

15 Q Okay. Now, 600 Palisade Avenue. Is that the property  
16 that we were just talking about in Union City?

17 A Yes.

18 Q That was the eminent domain?

19 A That's correct.

20 Q All right. So you no longer have it, correct?

21 A I still have my office in it.

22 Q Still have suite 202, right?

23 A Yes.

24 Q All right. Now, take a look at page 2 of the agreement  
25 in paragraph 3.

KOCHER - CROSS - DUBIN

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1 (Whereupon, the witness is reviewing the document.)

2 MR. DUBIN: If you can just blow up -- you were  
3 there. Paragraph 3.

4 A I'm not following you. Sorry. Tell me where it is  
5 exactly.

6 Q You see on your screen right in front of you.

7 A Okay.

8 Q Do you see that?

9 A Yes.

10 MR. DUBIN: Would you blow it up, Mr. Carter. There  
11 you go. Thank you.

12 Q And do you see it says, Representation of warranties of  
13 the subscriber. The subscriber hereby represents and warrants  
14 to the general partner and the partnership as follows.

15 And then it says, accredited investor qualification,  
16 and you checked that box, correct?

17 A Uh-huh.

18 Q And why don't you take a moment and just read that to  
19 yourself.

20 (Whereupon, the witness is reviewing the document.)

21 A Okay.

22 Q All right. That was all -- all applied to you, correct?  
23 That's why you checked the box; isn't that so?

24 A Well, this says one thing, but in another part of this it  
25 says you will be able to redeem your money back within a

KOCHER - CROSS - DUBIN

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1 month.

2 Q Where does it say that, sir?

3 A I'm -- I'm saying not in this paragraph, but in the  
4 subscription agreement.

5 Q You have the entire subscription agreement in front of  
6 you in that tab, in your binder.

7 A Which the tab.

8 Q The tab, sir, is, Tab 20 -- hold on one moment. Tab 2,  
9 sir.

10 A Tab 2 of the one you gave me?

11 Q Yes, sir. The white one.

12 A Okay.

13 Well, what I remember was that they said that I  
14 could get my money back within a month.

15 Q Okay. Is it possible, Mr. Kocher -- just asking you if  
16 it's possible -- that you're confusing that subscription  
17 agreement that you signed when you invested the additional  
18 money with the original subscription agreement you signed? Is  
19 that possible?

20 A It's possible.

21 Q Okay. Because it appears that if you are leafing through  
22 it -- and I'll give you all the time you need, sir -- that it  
23 says nowhere in that subscription agreement that you could get  
24 your money back within 30 days, correct?

25 A Well, it was my understanding that this was something

KOCHER - CROSS - DUBIN

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1 that I would be able to do.

2 Q Okay.

3 A And I think in the additional subscription agreement that  
4 was entered into later after the subsequent 100,000 that I  
5 invested, that it said in that one that it would change it  
6 from a monthly redemption to a weekly redemption. And I  
7 remember specifically talking to Kevin Mulleady about it.

8 Q Okay. We'll get to that. We'll get to that some.

9 MR. KESSLER: Let the witness answer. Give his  
10 answer.

11 MR. DUBIN: Oh, I thought he was done.

12 Q I apologize. Did I step on your words?

13 A Well --

14 Q If I cut you off, you let me know, please.

15 A Yeah. I -- my from the beginning, it was represented to  
16 me from Kevin Mulleady who was handling my half, that I would  
17 be able to get back my money within a month period when -- if  
18 I asked for it in a month in advance.

19 Q Okay. Well, Kevin Mulleady may have told that you, okay.  
20 It certainly doesn't appear to be anywhere in that  
21 subscription agreement, the initial one that you signed, which  
22 is GX33, correct?

23 MR. KESSLER: Objection to the form.

24 A Yes.

25 THE COURT: Yes. Why don't we try to stick with the

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1 appropriate cross examination.

2 Q It does not appear, this 30-day redemption that you speak  
3 of, does not appear in the GX33, correct?

4 A I guess not.

5 Q And certainly Mr. Evan Greebel never told you any such  
6 thing; did he?

7 A No.

8 Q In fact, Evan Greebel had nothing whatsoever to do with  
9 your decision to invest in MSMB, isn't that a fact, sir?

10 A That's true.

11 Q All right.

12 MR. DUBIN: And if you go to the next page of the  
13 subscription agreement, Mr. Carter, and you look at E, and  
14 I'll have that pulled up on the screen.

15 Q Do you see that, Mr. Kocher, on your screen?

16 A Yes.

17 (Exhibit published.)

18 Q And it says here, The subscriber has knowledge and  
19 experience in financial matters; that it is capable of  
20 evaluating the relative risks and merits of an investment in  
21 the partnership interest.

22 That was accurate about you, correct, sir?

23 A Yes.

24 Q And right under that at F, The subscriber has received  
25 and read, and is familiar with the partnership agreement, the

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1 memorandum and the subscription agreement, and confirms that  
2 all documents, records and books pertaining to the investment  
3 of the partnership, and required by it, has been made  
4 available or delivered to it.

5 Do you see that, sir?

6 A Yes.

7 Q That was accurate as well; right?

8 A Again, I -- the reason I invested with MSMB was because I  
9 trusted Kevin Mulleady.

10 Q Understood, sir.

11 But you have no reason to dispute that you received  
12 and read and were familiar with the documents listed in F,  
13 correct?

14 A Well, you're saying I -- I did receive it.

15 Q Okay.

16 A Whether I read it or not is another, you know, question.

17 Q We'll get to that. But it certainly was your  
18 responsibility to read it if you were signing this document,  
19 right?

20 A Well, if I was -- you know, smarter, yes.

21 Q The top of the next page, G, The subscriber had an  
22 opportunity to ask questions of and receive answers from the  
23 general partner concerning the terms and conditions of this  
24 subscription.

25 A Yeah, it never happened.



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1 Q Okay. But that's because you didn't ask, right?

2 A That's correct.

3 Q Okay. And if you look toward the bottom of page 5, and  
4 it's K.

5 Do you see here, sir, it says, The subscriber  
6 acknowledges and is aware of the following. Romanette i, the  
7 partnership is a newly-formed entity with little or no  
8 operating history; the speculative nature and the degree of  
9 risk involved in the partnership's investment activities; that  
10 there are substantial restrictions on the transferability of  
11 partnership interests; the partner interests will not be, and  
12 partners of the partnership have no rights, to require that  
13 the partnership interest be registered under the Securities  
14 Act.

15 And it goes on and on and on, correct?

16 A Yes.

17 Q And do you see there in VI it says, Except for its right  
18 to withdraw from the partnership, subject to the terms and  
19 conditions described in this memorandum and set forth in the  
20 partnership agreement, it may not be possible for the  
21 subscriber to liquidate its investment in the partnership, and  
22 other times, unless the general partner consents and it is  
23 under no obligation to do so.

24 Do you see that?

25 A Yes.

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1 Q And then it goes on to say, The general partner intends,  
2 in general, to reinvest partnership earnings, if any, rather  
3 than make cash distributions. And that The subscriber does  
4 not expect or require cash distributions from the partnership.

5 Sir, doesn't it appear that this 30-day right of  
6 which you speak is directly contradicted by K?

7 A Well, how come they gave me the additional agreement  
8 where they said they would be willing to take me out within a  
9 week in cash?

10 MR. DUBIN: Your Honor, I move to strike and ask him  
11 to answer the question that I asked.

12 THE COURT: Well --

13 MR. KESSLER: He just explained --

14 MR. DUBIN: I'm going to get to that, but I'm asking  
15 specially with regard -- I'll withdraw and ask it again.

16 THE COURT: Whether it's inconsistent or not, that  
17 was your question?

18 MR. DUBIN: I said that a right to withdraw within  
19 30 days seems to be directly contradicted by this paragraph.

20 THE COURT: Okay. He answered the question.

21 MR. DUBIN: Okay. I'll withdraw it and move on.

22 THE COURT: Okay.

23 MR. DUBIN: All right.

24 BY MR. DUBIN

25 Q Do you agree, sir, that it doesn't say anywhere in K that

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1 you could redeem it in 30 days, correct?

2 A Not in K. No.

3 Q Okay. In fact, what it says is that -- that you don't  
4 expect or require cash distributions from the partnership.

5 That's what it says, correct?

6 A That's what did says here, but then they gave me a letter  
7 that said that they, in fact, would redeem me within one week.  
8 And in that it said that they would change it from a month to  
9 one week.

10 Q I'm going to get to that, I promise.

11 A Okay.

12 Q But here it says no such thing, correct?

13 A That's correct.

14 Q And this is the initial subscription agreement that you  
15 signed, correct?

16 A It was the initial one, yes.

17 Q All right. And isn't it clear to you, sir, from the  
18 provisions that we just went through, that this was a risky  
19 investment?

20 A It wasn't clear, no. Not then, to me.

21 Q Okay. It wasn't clear to you because you didn't read  
22 this very closely, correct?

23 A No, because I trusted Kevin, and he said it was a good  
24 investment.

25 Q Okay. And so you trusted Kevin, right?

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1 A Yes.

2 Q There's nothing wrong with that, sir, is there; trusting  
3 someone?

4 A No.

5 Q And accepting their representations as true?

6 A Well, I had a history with him so...

7 Q Okay. Did you ask to see trading records when he told  
8 you that he made money for you?

9 A No.

10 Q You accepted him at his word; didn't you?

11 A Yes.

12 Well, when I was with Smith Barney, there actually  
13 were records.

14 Q Right.

15 A That's the difference.

16 Q Right. You got records, right?

17 And when were you getting the record -- when were  
18 you getting performance updates from Mr. Shkreli, you accepted  
19 them as true, correct?

20 A Well, from Martin Shkreli, he basically, you know, gave  
21 me three months out of -- practically out of the year, and it  
22 was all -- all in September so...

23 Q When you got it in September, and it was three months out  
24 of year, you never picked up the phone or emailed him and said  
25 I don't believe this, did you?

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1 A No.

2 Q Okay. You accepted that, notwithstanding the fact that  
3 he was behind and wasn't giving you regular performance  
4 updates, you accepted those updates as true, correct?

5 A Well, I hoped they would be.

6 Q All right. Now, let's talk about this subsequent  
7 subscription agreement that you signed in May of 2012, and I  
8 believe it's in evidence already as Government Exhibit 34.  
9 Okay?

10 MR. DUBIN: You can put that up.

11 (Exhibit published.)

12 MR. DUBIN: So can you just blow up. There you go.

13 Thanks.

14 Q So you see the date is May 1st, 2012, right?

15 A Yes.

16 Q And prior to this you had previously invested \$100,000,  
17 right?

18 A That's correct.

19 Q And you invested in an additional 100 grand pursuant to  
20 this agreement, correct?

21 A Yes.

22 Q So you see here where it says -- Government showed that  
23 you paragraph in the middle there, right?

24 Maybe they didn't, but I'll show it to you.

25 MR. DUBIN: Would you blow that up.

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1 Q In connection with such investment, the undersigned  
2 further acknowledges and agrees that, one, the undersigned has  
3 carefully read the funds confidential, private offering  
4 memorandum and subscription agreement in effect as of the date  
5 hereof and understand all of their terms.

6 You signed your name, basically saying -- at the  
7 bottom of this documents, basically saying that you did that,  
8 right?

9 A Yes.

10 Q So I'd like to show you that agreement.

11 MR. DUBIN: And it's -- I'll mark it as a defense  
12 exhibit.

13 I'll hand you what I will mark for identification as  
14 DX103-22.

15 THE COURT: Is that dash 22, sir?

16 MR. DUBIN: Yes, Your Honor.

17 THE COURT: Thank you.

18 Q Mr. Kocher, that is the confidential private offering  
19 memorandum referenced in GX34, correct?

20 A I guess so.

21 Q Okay. And you see it says, Private offering memorandum  
22 offering the limited partner interest in MSMB Healthcare, LP?

23 A Yes.

24 Q Okay.

25 MR. DUBIN: I'll offer it, Your Honor.

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1 MR. KESSLER: Can I ask one voir dire question?

2 THE COURT: Yes.

3 VOIR DIRE EXAMINATION

4 BY MR. KESSLER

5 Q Mr. Kocher, have you ever seen that document before?

6 THE WITNESS: I don't remember seeing it.

7 MR. KESSLER: There's no objection.

8 MR. DUBIN: Thank you.

9 THE COURT: No objection?

10 MR. KESSLER: No objection.

11 THE COURT: All right. We will admit Defense  
12 Exhibit 103-22.

13 (Defense Exhibit 103-22, was received in evidence.)

14 CROSS-EXAMINATION (Continued)

15 BY MR. DUBIN:

16 Q You don't remember seeing it, but you certainly signed a  
17 document on May 1st, 2012, saying that -- acknowledged and  
18 agreed that you carefully read it, correct?

19 A That doesn't mean I -- I ever received it.

20 Q Okay. Well, how can you carefully read it if you never  
21 received it?

22 A You couldn't.

23 Q Okay.

24 A You wouldn't be able to.

25 Q Right. So my point is that, before signing this, had you

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1 not got it and weren't able to read it, you could have said,  
2 hey, I'm not signing this saying I carefully read something  
3 that I never received, right?

4 A That's not why I invested. I invested because I felt  
5 like the fund was going to be good because it was recommended  
6 to me by someone I trusted.

7 Q Understood.

8 MR. DUBIN: And I move to strike the answer, Your  
9 Honor, and I would ask for an answer to the question that I  
10 just asked please.

11 THE COURT: All right. So why don't we strike  
12 Mr. Kocher's response, and can you reread the question that  
13 was asked by Mr. Dubin, and I'll ask Mr. Kocher to answer it.

14 MR. KESSLER: Okay.

15 (Whereupon, the record was read.)

16 MR. DUBIN: Can you answer that yes or no, sir?

17 A No, I can't.

18 Q Okay.

19 A Maybe you could rephrase it.

20 Q Well, you certainly had the option before you signed --

21 MR. DUBIN: Would you put back up, please, GX34.

22 Q Before you signed your name to this document saying that  
23 you read, carefully read the offering memorandum, you could  
24 have said I am not signing this document because I'm agreeing  
25 that I read something when I never received it.



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1           You could have done that; right?

2       A     That's correct. Yes. I -- I did not.

3       Q     All right. So I want to show you what you are attesting  
4     that you read. Okay?

5           Now, if we go back to GX103-22, and if you take a  
6     look at the third page of the document, and paragraph -- third  
7     from the bottom starting with Limited partnerships offered.

8           Do you see it says, The limited partnership interest  
9     offered hereby are illiquid.

10          Do you see that?

11          MR. KESSLER: Objection.

12       Q     Okay.

13       A     Uh-huh.

14          THE COURT: Overruled. Just to the extent he's  
15     asking whether he sees it.

16       Q     And you testified what, about an hour ago, you testified  
17     an hour ago that the fund was supposed to be liquid.

18       A     Yes, that was my understanding.

19       Q     Right. That was your understanding from who;  
20     Mr. Mulleady?

21       A     Yeah. And in general.

22       Q     In general, but never from Mr. Greebel; correct?

23       A     No, not from Mr. Greebel. I never spoken to Mr. Greebel  
24     at this point.

25       Q     Okay.

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1 A When I first entered into the contract.

2 Q Why don't we go to page 2 of the document. Not page 2 of  
3 the exhibit, but page 2 of the document, Bates stamped end 1-9  
4 please?

5 THE COURT: This is Exhibit 103-22?

6 MR. DUBIN: Yes, Your Honor.

7 THE COURT: Page 2 of that document?

8 MR. DUBIN: Yes, Your Honor.

9 Q And you see it's the third paragraph from the bottom  
10 starting --

11 THE COURT: Sorry. What the Bates number on the  
12 bottom?

13 MR. DUBIN: 1-9, Your Honor.

14 THE COURT: Oh, 1-9.

15 MR. DUBIN: Yes.

16 THE COURT: Thank you.

17 BY MR. DUBIN:

18 Q Do you see that on your screen, Mr. Kocher?

19 A Yes.

20 Q It say there in the middle, The partnerships investments  
21 may also include securities that are thinly traded and  
22 non-publicly traded or restricted securities, right?

23 A Yes.

24 Q Do you recall when you told the jury a little bit earlier  
25 that when you learned about restricted securities, when you

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1 were going through the settlement discussion, it certainly is  
2 mentioned in this document?

3 MR. KESSLER: Objection to the form of the question.

4 THE COURT: Try to rephrase, Mr. Dubin.

5 Q Do you remember testifying a little while ago and I think  
6 there was some lapse when you said you quickly learned what a  
7 restricted security was?

8 A That's correct.

9 Q Okay. Well, you would agree, sir, that the private  
10 offering memorandum that you received months and months  
11 earlier talked about restricted securities --

12 A You're --

13 MR. KESSLER: Objection.

14 THE COURT: Sustained. Sustained. Sustained.

15 You don't need to answer it.

16 Q Sir, your testimony is not that you didn't receive this  
17 document, it's that you just don't recall, right?

18 A I don't remember seeing this document.

19 Q Do you remember testifying in a prior proceeding about  
20 whether or not you received that document?

21 A No.

22 Q No? Let me -- bear with me one moment.

23 Well, you know what, I'll get to it when I get to it  
24 in order.

25 But in any event, let me just show you one or two

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1 more of these and I'll move on.

2 Go to page 12 of the documents Bates stamp ending 29  
3 please.

4 (Exhibit published.)

5 BY MR. DUBIN:

6 Q Do you see the on page 12 -- there you go.

7 At the bottom, there's -- about the last paragraph  
8 says, Investment in restricted securities.

9 Do you see that?

10 A Yes.

11 Q And it says, The partnership may invest up 10 percent of  
12 its assets in restricted securities.

13 Do you see that?

14 A Yes.

15 Q And it tells you what they are, right, which are  
16 securities subject to significant legal and contractual  
17 restrictions under public resale, correct?

18 A Yes.

19 Q All right.

20 Now, you probably read this; didn't you?

21 A No.

22 Q All right. Why don't you go to page -- why don't you go  
23 to your -- see where it says trial TR, on your binder, third  
24 tab?

25 A Sorry. In the binder that you gave me?

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1 Q Yes. Yes, sir.

2 A And which tab; 3?

3 Q Trial TR. It's the third tab, not tab number 3, but the  
4 is tab that is marked trial, TR.

5 MR. KESSLER: It is marked 3500RK.

6 MR. DUBIN: Might be.

7 Q 3500RK?

8 A Yes. Yes.

9 Q And if you can go to page 2401.

10 A Yes.

11 Q Okay. Do you recall being asked this question on line 1  
12 and giving these answers in a prior proceeding?

13 "QUESTION: Do you know what that is?

14 "ANSWER: The private offering memorandum.

15 "QUESTION: Right.

16 "ANSWER: It was probably an MSMB part of the  
17 paperwork.

18 "QUESTION: Did you read it?

19 "ANSWER: Probably, yes. I don't remember  
20 specifically -- I read a lot of stuff. This is about MSMB. I  
21 did read stuff originally, but that was, you know, now 2012.  
22 So that's five years ago.

23 "QUESTION: Now, you did read MSMB  
24 Healthcare, LP private offering memorandum before you  
25 invested? And just to be clear, that's DX" --

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1 THE COURT: 103-22?

2 MR. KESSLER: Your Honor, was that a question?

3 MR. DUBIN: Yes, I'm asking the question.

4 "QUESTION: Now, did you read the MSMB  
5 Healthcare, LP private offering memorandum before you  
6 invested?

7 "ANSWER: I assume I did.

8 "QUESTION: Can you recall as you're sitting here  
9 today whether you read it or not?

10 "ANSWER: I read paperwork on MSMB. I don't  
11 remember specifically what I read."

12 Q Is that testimony that you gave at a prior proceeding in  
13 this matter?

14 A Yes.

15 Q Okay. So I want to go back now to GX -- so, sir --  
16 actually, when I asked you a minute ago if you probably read  
17 it and you said no, that wasn't correct; was it?

18 A No, it probably was correct.

19 I don't remember reading this, okay?

20 Q Okay. But you remembered reading a lot of stuff about  
21 MSMB when you testified in a prior proceeding?

22 A I briefly skimmed some of the stuff they sent me.

23 Q Okay. In the --

24 A That was a long time ago and I don't know if it was this.

25 Q Okay. In the --

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1 A I definitely didn't read this; the specific things that  
2 you've been pointing out. I don't remember any of it.

3 Q Okay. And then the question and answer that I just asked  
4 you, you never said you briefly skimmed did; did you?

5 A No, I didn't because when I said I briefly skimmed, I  
6 briefly skimmed some things that were sent to me. But I don't  
7 remember this specifically.

8 THE COURT: This being DX103-22?

9 THE WITNESS: Yes.

10 THE COURT: All right.

11 Q Okay. Now, I want to put back up --

12 MR. DUBIN: I want to put back up GX 34, please.

13 (Exhibit published.)

14 Q So where it says here, In connection with such  
15 investment, the undersigned further acknowledges and agrees  
16 that it's carefully read the fund's confidential private  
17 offering memorandum.

18 We went through you will of that, right?

19 A Yes.

20 Q I wanting to go to the next page, which is what you  
21 referred to a few times, I believe.

22 MR. DUBIN: And if you go to the -- let's go to  
23 number two please.

24 (Exhibit published.)

25 Q Now, it says -- and you remember being shown this during

KOCHER - CROSS - DUBIN

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1 your direct examination, right?

2 A Yes.

3 Q And it says, Notwithstanding anything to the contrary,  
4 set forth in the memorandum, and the memorandum is defined in  
5 this letter, in the first paragraph, as the confidential  
6 private offering memorandum, which we went through a little  
7 while ago; right?

8 A Yes.

9 Q It says, You will be permitted to redeem your exempt  
10 interest. Your exempt interest.

11 Do you know what your exempt interest was?

12 A No, I don't know what it is specifically.

13 Q Okay. But it says, You will be permitted to redeem your  
14 exempt interest as of the final business day of each calendar  
15 week, instead of the final business day of each calendar  
16 month, right?

17 A Yes.

18 Q It doesn't say you will be able to redeem your entire  
19 investment that you ever made in MSMB; does it?

20 A No.

21 Q Okay. It just says your exempt interest and sitting here  
22 today, you don't know what that means, right?

23 A That's correct. It's not clear.

24 Q Okay. Regardless of what it says, and what it is you  
25 think you agreed to, or did, in fact, agree to, Mr. Greebel



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1 had nothing to do with your signing this document; did he?

2 A Not that I know of.

3 Q Okay. Now, by the way, you have no knowledge, sir, of  
4 who prepared that private offering memorandum; correct?

5 A That's correct.

6 Q Okay. And you certainly are not saying that Mr. Greebel  
7 had any hand in preparing that document; are you?

8 A No.

9 Q All right. Now, you talked a little bit about the -- on  
10 your direct examination about how much money you made.

11 A Yes.

12 Q All right. Now, you know that in any financial  
13 investment, be it a risky one, a hedge fund, whatever it is,  
14 you can lose money, right?

15 A That's correct.

16 Q In fact, you know, lose at your money, no guarantees,  
17 right?

18 A That's correct.

19 Q Here, ultimately, you made a substantial profit on your  
20 investment, right?

21 A Yes.

22 Q You invested a total of \$200,000, right?

23 A That's correct.

24 Q And as part of the settlement agreement, you got some  
25 cash and some Retrophin, right?

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1 A Yes.

2 Q Cash portion was, what, 122,700, right?

3 A Something like that, yes.

4 Q All right. And that cash was, in fact, wired to your  
5 account, right?

6 A Yes.

7 Q And you remember you were sent some wiring instructions  
8 and it didn't come right away, but it eventually came, right?

9 A That's correct.

10 Q In fact, it took you a little over two months from the  
11 time you said I want my cash for you to get some cash, right?

12 A It was longer than that. But that's, you know,  
13 technically you can say it was two months.

14 Q Okay.

15 A But I started trying to get the money back way before  
16 that.

17 Q All right. In any event, you also got 47,128 shares of  
18 Retrophin, right?

19 A That's correct.

20 Q And those, sir, were freely tradeable shares, right?

21 A Yes.

22 Q And you sold those Retrophin shares, right?

23 A Yes.

24 Q And you know that after you sold those shares the stock  
25 went up in value quite a bit, right?

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1 A Yes.

2 Q So if you had held on to those shares, and sold them when  
3 they were higher, you would have made even more money, right?

4 A That's correct.

5 Q All right. Even in 2015 -- or excuse me. Strike that.

6 Even in 2013, when you ultimately sold them, you  
7 made, what, over \$350,000, right?

8 A The 350,000 included the original investment and included  
9 the cash.

10 Q Okay. It included the original investment and the cash.

11 That is a pretty nice return on your money, right?

12 A Yes.

13 Q Had you ever, outside of real estate deals, had you ever  
14 made that kind of return on an investment in stock?

15 A No.

16 Q Now, are you aware, sir, that -- what the prosecution is  
17 claiming in this case --

18 MR. KESSLER: Objection.

19 THE COURT: Sustained.

20 Q Are you aware, sir, that the allegation in this case --

21 MR. KESSLER: Objection.

22 THE COURT: Wait. Wait. Sustained. Let's have a  
23 sidebar.

24 (Continued on the next page.)

25 (Sidebar conference.)

SIDEBAR CONFERENCE

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1 THE COURT: What is the question going to be?

2 MR. DUBIN: The question is going to be if he's  
3 aware that the allegation in this case against Mr. Greebel is  
4 that a settlement agreement that entered into is alleged to  
5 have been fraudulent.

6 MR. KESSLER: It's irrelevant.

7 MR. DUBIN: It's very relevant.

8 MR. KESSLER: What's the relevance?

9 THE COURT: Is he aware that the Government's  
10 charging -- you're saying that his awareness of the Government  
11 charges is relevant to the proof that the Government has to  
12 submit as a defense?

13 MR. DUBIN: Absolutely.

14 THE COURT: How?

15 MR. DUBIN: Because the next question -- I asked  
16 this question, by the way, to Ms. Hasson and there was no  
17 issue with it. I asked the same exact question. That's  
18 first.

19 Second, the next question I'm going to ask him is if  
20 he's given the money back. Because the Government's claim in  
21 this case is that the money was of ill-gotten gains that  
22 belong to Retrophin.

23 THE COURT: No, I don't think they're saying that  
24 ill-gotten gains to the investors. They're saying it was --  
25 they are alleging that it was unlawfully and fraudulently

SIDEBAR CONFERENCE

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1 obtained from the Retrophin.

2 They're not saying that the investors engaged in any  
3 illegal activity or received ill-gotten gains.

4 MR. DUBIN: I'm not going to suggest that.

5 THE COURT: They're alleging that charged  
6 individuals had defrauded Retrophin.

7 MR. DUBIN: Understood, Your Honor.

8 THE COURT: You need to be careful how you phrase  
9 your question.

10 MR. DUBIN: Can I finish, please? Thank you.

11 I am going to phrase it very similar to how I did  
12 with Ms. Hassan. And Your Honor allow the question, and the  
13 Government had nothing to say anything about it.

14 And what I'm going to ask if he's giving any money  
15 back. I won't ask if it's ill-gotten gains or if he's in  
16 possession of stolen goods or stolen funds or anything like  
17 that.

18 What I intend to ask him is that if the Government's  
19 claim in this case that money that he was given rightfully  
20 belonged to Retrophin, and then I'm going to ask him how much  
21 he's given back.

22 That is very relevant, because if they're claiming  
23 that the money somehow was taken from the Retrophin --

24 THE COURT: You're asking an alleged victim of a  
25 fraud, i.e., Counts 1 through 6, whether he should have an

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1 obligation to return the money?

2 MR. DUBIN: I'm going --

3 THE COURT: When the charges are that Retrophin  
4 assets were used to pay him?

5 MR. DUBIN: Yes. I'm not going to ask him if he has  
6 an obligation --

7 THE COURT: Well, the question suggests that he has  
8 some sort of an obligation as a victim of the fraud charged in  
9 Counts 1 through 6 has an obligation to pay the other alleged  
10 victim of the -- in Charges Seven and Eight.

11 MR. DUBIN: I'm not going to ask him if he has an  
12 obligation.

13 THE COURT: No, but the implication by asking if he  
14 should have paid it back or whether he did pay it back, the  
15 implication that you're leaving is that somehow an alleged  
16 victim of Counts One through six should have an obligation to  
17 compensate the alleged victim of Counts Seven and Eight.

18 That's having a precedent.

19 MR. DUBIN: And you know what I'm going to do? I'm  
20 go to ask him if Retrophin ever asked him for the money back.  
21 That is certainly relevant.

22 MR. KESSLER: None of that is relevant to his  
23 personal knowledges of the events in the case.

24 Furthermore, they're going to ask him about  
25 Retrophin getting the money back, and then we are going to get

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1 into the civil lawsuit where Retrophin is seeking all of the  
2 money from Mr. Shkreki. And we'd also like the Court to  
3 inform the jury about the forfeiture allegations against  
4 Mr. Shkreki and Mr. Greebel with respect to the ill-gotten  
5 funds.

6 The point is none of this is relevant. Whether or  
7 not, in 2015, the Government asked Mr. Kocher for money,  
8 Mr. Kocher somehow decided to give money back, of charges he  
9 has no knowledge of, does not make it more or less likely that  
10 any of the charged conduct occurred or did not. It just  
11 doesn't.

12 THE COURT: I think you're running a risk infecting  
13 the trial with matters that are is not relevant.

14 His understanding of the charge and whether he  
15 should have given money back to Retrophin based on the charged  
16 conduct is not relevant. You're going to end up opening a lot  
17 of doors that you don't want to open.

18 MR. DUBIN: Your Honor, I understand.

19 THE COURT: I mean I think you should go talk your  
20 colleagues and your client is running a big risk if the door's  
21 is going to be open.

22 MR. DUBIN: The door is going to be open for what?

23 THE COURT: He said he's going to ask questions  
24 about the civil lawsuit, the forfeiture, and other matters  
25 where people are trying to get money back.

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1 MR. DUBIN: Your Honor, the Government has  
2 charged -- he comes here to testify today, it's not relevant  
3 whether he even knows what Mr. Greebel's been charged with?

4 MR. KESSLER: It's absolutely not.

5 THE COURT: No, it's not relevant because Ms. Hassan  
6 was also ignorant of the charges. She didn't know what the  
7 case was about. She doesn't know intimately. She's not  
8 intimately familiar with the charges.

9 I told the jury what the charges are. I will  
10 instruct them further on the element of each charges.

11 What this witness knows or doesn't know about the  
12 charges is not relevant. The jury has to decide whether the  
13 Government has proven beyond a reasonable doubt the charges in  
14 Seven and Eight. To try to shift the onus on to the alleged  
15 victim of charges Counts One through Six is just not  
16 appropriate.

17 MR. DUBIN: Your Honor --

18 THE COURT: And I'm telling you, it's just not  
19 relevant. It's not proper.

20 MR. DUBIN: Your Honor, we feel that it's very  
21 relevant, and we feel that the fact that the Government has  
22 not asked any of these alleged victims to give money back when  
23 out of one side of their mouth saying that Retrophin was  
24 defrauded is very relevant.

25 MR. KESSLER: Defrauded by the victims. We have



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1 asked for the money back from the people we have accused doing  
2 the fraud through the forfeiture allegations.

3 Retrophin has sued Mr. Shkreki for the money back.  
4 No one has sued the victims.

5 MR. DUBIN: Just so I'm clear, so I'm very clear, I  
6 am not suggesting for a moment, nor will I involve a jury and  
7 I'm not doing it now, that Mr. Kocher did anything wrong or  
8 has any obligation to --

9 THE COURT: Why did you ask him whether he gave the  
10 money back then?

11 MR. DUBIN: Because I want to know whether or not he  
12 has knowledge of the fact that the Government has claimed that  
13 the money that he received was taken from someone that it  
14 shouldn't have been.

15 And possessed with that knowledge, I think that it's  
16 fair to say a lot of people might say, well, I don't want it.  
17 Then give it back. And I think that that's completely  
18 relevant.

19 THE COURT: He wanted his back from Mr. Shkreki and  
20 his MSMB investment --

21 MR. DUBIN: Even if it was wrongly taken?

22 THE COURT: -- but instead, allegedly, money was  
23 taken from Retrophin to make him whole, as with the other  
24 victims. Right, it doesn't make them perpetrators or holders  
25 of ill-gotten gains. They are alleged victims in Counts One

1 through Six.

2 So to ask one victim whether they should have paid  
3 back another alleged victim is inappropriate. It's irrelevant  
4 and it's confusing and prejudicial to everybody, including  
5 your client, because then they're going to be able to, or will  
6 want to push hard to get information before the jury about the  
7 attempts to retrieve money by Retrophin and the SEC on the  
8 alleged, you know, misconduct.

9 MR. BRODSKY: Your Honor, is it appropriate for us  
10 to ask whether he has returned any of the money to Retrophin?

11 The reason for why it's relevant is the agreement  
12 that he signs, that Mr. Kocher signs, the Government says it's  
13 a fraud. The fraud, generally, poses the agreement invalid,  
14 the agreement itself is invalid, and the money has to be  
15 returned, and then everybody figures out what's the result.

16 So, for example --

17 THE COURT: He had a settlement agreement.

18 MR. BRODSKY: He had a settlement agreement, so we  
19 think it's a relevant fact.

20 THE COURT: I think the aspect, if I understand the  
21 Government's allegation of what is fraudulent about the  
22 settlement or consulting agreements, the common thread is that  
23 assets of Retrophin were used to compensate investors and MSMB  
24 Capital and MSMB Healthcare.

25 He's testified he has no idea Retrophin had anything

1     whatsoever to do with his investment in MSMB Healthcare.

2             The additional alleged fraud, as I understand from  
3     the Government's theory on consulting agreements, is that some  
4     of the folks had no consulting whatsoever for Retrophin.

5             So I think that it's really what his knowledge is  
6     regarding the charges is really not relevant to be proven  
7     whether or not the Government is going able to prove beyond a  
8     reasonable doubt that Mr. Greebel is guilty of Count Seven and  
9     Eight.

10            MR. DUBIN: Your Honor, perhaps I can lay a further  
11     foundation.

12            THE COURT: I'm going to give them a break.  
13            I'm going to give the members of jury a break at  
14     this time.

15            Please don't talk about the case. Thank you.

16            (Jury exits the courtroom.)

17            THE COURT: Let's just stay here for a minute.  
18     Let's just get this resolved before we take our break. All  
19     right.

20            MR. DUBIN: Can I continue real quick?

21            What I'm going to do in the next section, or in a  
22     section coming sometime soon, is he testified at the Shkreki  
23     trial that he thought MSMB and Retrophin were the same. He  
24     testified to that. But he couldn't even -- essentially what  
25     he says is it that he couldn't distinguish between the

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1 entities and he thought Retrophin was part of MSMB.

2 So the fact that he thinks --

3 THE COURT: If your confronted with prior  
4 inconsistent statements, that's fine. If he said that. I  
5 don't recall exactly what he said. But if he said something  
6 different today than he said back then, yes.

7 MR. DUBIN: Here's my point.

8 MR. KESSLER: Your Honor, just so we're clear on the  
9 Court's ruling, that is about a prior inconsistent statement.  
10 That is about a prior inconsistent statement and not the  
11 relationship between MSMB and Retrophin, not this issue  
12 about --

13 THE COURT: Repaying.

14 MR. KESSLER: The forfeiture or the repaying.

15 Obviously if there's a prior inconsistent statement  
16 and it's otherwise relevant to bring to his attention, that's  
17 fine.

18 THE COURT: Right.

19 MR. DUBIN: I want to be perfectly clear about what  
20 my intent is.

21 My intent is not to somehow say that an alleged  
22 victim somehow has an obligation to give it back.

23 But as Mr. Brodsky stated, the Government's  
24 allegation -- I won't state it as the Government's allegation,  
25 but one of the main contentions in the case is that the

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1 settlement agreement was a fraud. Because the money that was  
2 used and listed in that settlement agreement, the cash that  
3 was used, and the shares, shouldn't have been used, period, to  
4 settle that agreement.

5 So typically when that happens, the agreement, they  
6 are saying, is a fraud.

7 MR. KESSLER: Which criminal trials result in the  
8 allegedly fraudulently agreement being dissolved and having  
9 the victim return the money before the trial.

10 MR. BRODSKY: Ponzi schemes all the time.

11 MR. KESSLER: This isn't a Ponzi scheme.

12 MR. BRODSKY: The government actually in the press  
13 release said it was a Ponzi scheme.

14 Your Honor, I think it's perfectly fair for us to  
15 elicit from everybody who the Government alleges  
16 misappropriated -- they don't allege they misappropriated, I  
17 apologize, Your Honor. They alleged that the money received  
18 by the settlement party was misappropriated from Retrophin.

19 It's perfectly permissible for us to elicit they've  
20 kept the money. They haven't given it back.

21 MR. KESSLER: What fact of consequence with respect  
22 to any charge does that make more or less likely to be true?

23 MR. DUBIN: It makes it more likely that it's a real  
24 agreement and it's not a fraudulent agreement.

25 MR. KESSLER: But they don't know.

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1 THE COURT: But you're saying that because an  
2 alleged victim of the Counts One through Six lost money and  
3 was compensated through an alleged fraud committed in Counts  
4 Seven and Eight that somehow they have an obligation to give  
5 money back. And the fact that they didn't makes more valid  
6 the alleged fraud or negates the allegation of fraud in Counts  
7 Seven and Eight.

8 MR. BRODSKY: No, Your Honor. No, Your Honor.  
9 First we're not charged in one through six.

10 THE COURT: Exactly. So that's why that's --

11 MR. BRODSKY: But in seven and eight --

12 THE COURT: Let me just finish.

13 Counts One through Six is what happened that led to  
14 the agreements in Count Seven, right?

15 So having not been victims of the misstatements or  
16 fraud of Mr. Shkreki charged in Counts One through Six, we  
17 would not have any agreements whatsoever with MSMB Capital or  
18 MSMB Healthcare.

19 MR. BRODSKY: We have a different view of that, Your  
20 Honor.

21 THE COURT: I'm just looking at the allegations. I  
22 don't know any more what the facts are, you know.

23 MR. BRODSKY: With he respect to Count Seven, we  
24 have a different view of facts than the Government does. The  
25 Government says this was misappropriated assets from

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1 Retrophin. It makes it less likely it's misappropriated if  
2 the people who received the assets keep them.

3 And a good perfect example is stolen property. In a  
4 classic case when the Government says you, innocent victim,  
5 have possession of stolen property, it doesn't matter whether  
6 you're an innocent victim or not, you can't keep the stolen  
7 property, just because you've been defrauded in another place.

8 THE COURT: But what you're doing is you're  
9 suggesting a rule of law that somehow the victims who received  
10 settlement or consent agreements has some legal obligation  
11 based on the charged frauds in seven and eight to give money  
12 back.

13 And that's just not accurate. It's just -- it's an  
14 irrelevant distraction. It's going to confuse the jury. It's  
15 going to open doors that I don't think you want to open. And  
16 his understanding of the charges in this case and whether he  
17 gave money back from his settlement agreement is irrelevant.  
18 I just --

19 MR. BRODSKY: If the money was really  
20 inappropriately taken from Retrophin, it is a relevant fact  
21 that people who have perceived the allegedly misappropriated  
22 money have kept it.

23 THE COURT: If they knew and conspired with  
24 Mr. Greebel and Mr. Shkreli to rob Retrophin of assets that  
25 they knew Retrophin shouldn't have paid them, yes, I would

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1 agree with you. But that's not the allegation.

2 MR. DUBIN: I understand, Your Honor, and just so  
3 it's clear because it seems like my intent in asking the  
4 question is getting somehow lost here or Your Honor thinks I'm  
5 trying to put --

6 THE COURT: When you ask a question, when you say  
7 did you give the money back suggests that there's an  
8 obligation they're done so. Like somehow they should have.

9 MR. DUBIN: The reason why I asked him if he knows  
10 what the charges are is specifically for the reason that Your  
11 Honor was just outlining.

12 I want to know if he's aware, if he does have an  
13 awareness that this settlement agreement was the proceeds that  
14 he was received was fraudulent, if he does possess that, I can  
15 frame it in a different way and he's decided to keep it  
16 nonetheless. That's highly relevant.

17 MR. KESSLER: To what?

18 MR. DUBIN: For all the reasons that Mr. Brodsky  
19 stated. Because it -- I'll tell you what it's relevant to.  
20 It's relevant because it goes to show that in his estimation  
21 he finds nothing wrong with them.

22 And the reason why I brought Your Honor's  
23 attention -- excuse me, please. The reason why I brought Your  
24 Honor's attention to where I'm going next is because in his  
25 mind, okay, similar to what was in Mr. Greebel's mind, we will



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1 argue, that MSMB and Retrophin were the same and that he  
2 couldn't distinguish one from another. In his mind there's  
3 nothing fraudulent about these agreements. Just because the  
4 Government says it, doesn't make it so. They're claiming that  
5 they're fraudulent, we're claiming they weren't.

6 THE COURT: How is this knowledge or his -- the  
7 payment that he received from Retrophin and Mr. Shkreki, or  
8 whomever, relevant to proving the Government's burden of prove  
9 against Mr. Greebel?

10 MR. DUBIN: I'll tell you. Because if there's  
11 another individual that was a party to the agreement. If Your  
12 Honor will just hear me out. If there was another individual  
13 that was a party to these agreements who had sophisticated  
14 counsel representing him, who disagrees with the proposition  
15 that these were somehow fraudulent, that's yet another person  
16 who says I didn't think this was a fraud. I still don't think  
17 it's a fraud. That's why I didn't give the money back.

18 That couldn't be more in the wheelhouse of what  
19 Mr. Greebel is charged with. They are saying that it's a  
20 fraud and it's a fraudulent agreement. We say it isn't so.  
21 Just because they say so doesn't make it more likely.

22 THE COURT: But Mr. Kocher, I thought when he was  
23 reviewing the terms of the settlement agreement, I thought  
24 that he was saying that cash was going to come, he was just  
25 reading from the terms of the agreement, either from

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1 Mr. Shkreki or Retrophin -- no, I'm sorry, MSMB or Retrophin  
2 and he said that he was saying he didn't know where it came  
3 from.

4 MR. DUBIN: That's not what he said, Your Honor. In  
5 the settlement agreement, it says that the cash comes from  
6 Retrophin.

7 MR. KESSLER: From MSMB.

8 THE COURT: And/or; did he?

9 MR. DUBIN: When he's asked, you know, did you  
10 distinguish between the two, I'm going to show him his prior  
11 testimony where he says he thought they were the same.

12 MR. KESSLER: And that's potentially a prior  
13 inconsistent statement, which has nothing do with -- if the  
14 point is if Mr. Kocher had full information, then as the Court  
15 said, it is possible that his retention of the funds might be  
16 probative of something, but he doesn't.

17 MR. DUBIN: He doesn't know, I haven't asked the  
18 question.

19 MR. KESSLER: Then why don't we lay the foundation?  
20 Let's ask if he knows that the board approved various things?  
21 Let's ask him if he knows what Mr. Greebel knew at various  
22 points?

23 And then on redirect, I will go through the entire  
24 agreement and we will go through all the acts that we've  
25 alleged to see if Mr. Kocher knows. Because that is the basis

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1 for knowing whether or not he believes there's a fraud.

2 The point is --

3 THE COURT: Did he know at the time the acts  
4 alleged -- did he know at the time he accepted the settlement  
5 agreement the acts alleged in the indictment?

6 MR. KESSLER: Sure. Let Mr. Dubin read all the acts  
7 alleged in the indictment to find out if Mr. Kocher knew.  
8 That's the basis.

9 MR. DUBIN: I'm going to conduct the examination the  
10 way I think is appropriate for my client. And I do not need  
11 to do any of those things, nor is the Government permitted to  
12 start, as much as they want to, make this the Martin Shkreli  
13 trial, nor are they permitted to do. I am permitted to ask,  
14 Your Honor, whether if was aware at the time --

15 THE COURTROOM DEPUTY: Judge.

16 THE COURT: Oh, I'm sorry. We will put the noise on  
17 just for a minute. We'll put the noise on, it's okay.

18 MR. DUBIN: I am permitted to ask him -- the  
19 Government is telling you, making a representation of what he  
20 knew or didn't know? That's very well. They made other  
21 representations about witnesses that when we asked them turn  
22 out not to be so.

23 So we're entitled to ask him if at the time he knew  
24 that this is some sort of fraudulent --

25 THE COURT: It wasn't alleged at the time because at

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1 the time the settlement agreement the Government hadn't  
2 indicted Mr. Greebel. Okay, how can one know that?

3 MR. DUBIN: Well, you just asked him if you knew at  
4 the time.

5 THE COURT: I'm just saying he could not have known  
6 at the time. That's why I'm asking Mr. Kocher what he knew at  
7 the time regarding whether there is fraud, alleged fraud on  
8 Retrophin --

9 MR. DUBIN: I'm not going to ask him that.

10 THE COURT: -- or that the transaction was somehow  
11 unlawful and whether because of that he gave the money back.  
12 I just think --

13 MR. DUBIN: I'm not asking --

14 THE COURT: You were going to ask him whether he  
15 gave the money back --

16 THE COURT REPORTER: I'm sorry.

17 THE COURT: I'm used to it with him, unfortunately,  
18 it happens all the time, so.

19 MR. DUBIN: Your Honor, I'm sorry.

20 THE COURT: No, it happens all the time. And I've  
21 tried to be understanding of your zealousness but it is  
22 wearing me down, as I say, frankly.

23 I'm trying -- you know, I've made -- I don't think  
24 it's relevant respectfully. It's just not relevant.

25 MR. KESSLER: Your Honor, there is one other thing,

1 which is not a problem now, but it's potential.

2 When Mr. Dubin pointed Mr. Kocher to a prior  
3 transcript that he testified to and Mr. Dubin directed him to  
4 a tab called "trial transcript", I assume it's labeled  
5 "trial", you know, this is going to happen at some point, but  
6 I just want to sensitize everyone to the fact that we are  
7 being extremely careful not to use the word "trial" to refer  
8 to anything that's happened in the past. And so to the extent  
9 there are other tabs or other documents have "trial" on them  
10 or are labeled in that way, I just flag that hopefully there's  
11 another way --

12 THE COURT: We've all been saying "the prior  
13 proceeding," which I think is appropriate.

14 I was looking for that tab, too, in my book and it  
15 says 3500.

16 I'm just saying we're trying to avoid the word  
17 "trial," because we don't want the jury to know about the  
18 prior trial. We're trying very hard to keep the two separate.

19 MR. KESSLER: Thank you.

20 MR. DUBIN: May I just ask one question?

21 THE COURT: Yes.

22 MR. DUBIN: I would like to ask him, including  
23 anything about the charges or knowledge or anything else, I  
24 want to ask him if he's given any money back. That's  
25 appropriate.

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1 MR. KESSLER: That's the entire thing we've just  
2 been arguing about for 15 minutes.

3 What is the relevance?

4 THE COURT: Why would he give the money back, what's  
5 the relevance?

6 MR. BRODSKY: Your Honor, again, if you have --  
7 we're saying the agreement -- we're saying that Retrophin had  
8 an interest in making sure it wasn't sued. We're saying that  
9 Retrophin had an interest in making a payment. We're not  
10 saying that it was in the best interest of Retrophin to settle  
11 it.

12 Despite other things going on, the fact that he  
13 still has the money and he's kept the profits is relevant.  
14 For our perspective to says it's a valid agreement, and  
15 Retrophin has gotten the benefit of the bargain. It's one of  
16 our defenses that we put in our motion. It's one of classic  
17 defenses to wire fraud.

18 And what happened in Judge Preska recently dismissed  
19 the wire fraud allegation in the Southern District of New York  
20 because what she found in connection with an agreement that  
21 one of the parties got the benefit of the bargain.

22 And so if we're going to argue to the jury, which  
23 we're allowed to as I understand it is a perfect defense and  
24 it's in your consideration of Rule 29, or at the end of the  
25 trial, if you get the benefit of the bargain, then under wire

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1 fraud, based on Judge Preska and the precedent, and the  
2 precedent she cites, that is a valid, a legal defense.

3 And so the benefit of the bargain is Retrophin has  
4 accepted, these people have received the money, and in  
5 exchange, they have avoided lawsuits. They've avoided legal  
6 expenses, and we will show that to the jury.

7 MR. KESSLER: So, Your Honor, the benefit of the  
8 bargain is relevant in a right to control theory, which was  
9 litigated extensively in a motion in limine and motion to  
10 dismiss context. That's not the theory we're advancing here.  
11 The benefit of the bargain is not a defense to a straight up  
12 fraud.

13 Second of all, if they want to show that Retrophin  
14 got the benefit of the bargain, then the question is,  
15 Mr. Kocher, have you sued Retrophin, which he has not. So  
16 that doesn't -- nothing else would show that Retrophin got the  
17 benefit of any, you know, hypothetical bargain.

18 THE COURT: Retrophin got a release from Mr. Kocher.

19 MR. KESSLER: And the fact that they got the release  
20 is in the record. That's been established.

21 The point is that the argument that Mr. Brodsky laid  
22 out is exactly the same argument that we've been talking about  
23 for 15 minutes. The Government hasn't asked for the money  
24 back for a number of reasons, including that there's a  
25 forfeiture allegation against the defendants.

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1           Second of all, he doesn't know that the agreement is  
2 a fraud. And in order -- well, if you want to know if he  
3 knows the agreement is a fraud, then they should lay a proper  
4 foundation for whether he knows all of the facts that are at  
5 issue here.

6           MR. BRODSKY: Your Honor, in Judge Preska's case and  
7 the other cases under wire fraud theory, for benefit of the  
8 bargain, the benefit of the bargain was a defense. In each of  
9 those case the Government said it was a fraud. They didn't  
10 argue that one party got the benefit of the bargain or the  
11 other.

12           What happened was, as Your Honor knows, the defense  
13 said the other side got the benefit of bargain. Under the  
14 wire fraud charges, the Government said the agreement's a  
15 sham. The agreement was the result of a misrepresentation  
16 that induced one party to enter into the contract with the  
17 Government, with the other party.

18           We're trying to argue that I know the Government  
19 says it's fraud. We're arguing that both parties got the  
20 benefit of the bargain, and we're allowed to elicit the facts  
21 to allow us to make that defense.

22           THE COURT: And that no material misstatements or  
23 omissions were made to the Retrophin board to gain Retrophin's  
24 payment.

25           MR. BRODSKY: It's part of our defense.



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1 I mean their argument is, and we'll get to this when  
2 it comes to the jury instructions, that somehow outside  
3 counsel had a duty to do certain things to the board and say  
4 certain things without make any statements.

5 In other words, in the absence of any affirmative  
6 statements they're saying somebody should have had a duty to  
7 speak. That's an argument for a different day.

8 We certainly are saying that there were no  
9 affirmative misrepresentations made. We're certainly saying  
10 the board, like Mr. Richardson said, had access to the  
11 information. We're certainly saying that Marcum had copies of  
12 the settlements. They reviewed the settlements and they  
13 actually had access to them.

14 We're saying that the chief financial officer,  
15 Panoff, had access to them and was well aware of them and that  
16 the board, as we've shown through Mr. Richardson, had constant  
17 information relating to the settlements.

18 It is hard, Your Honor, that the board members are  
19 saying they have the duty of oversight under the bylaws. It  
20 is odd to us that they're the ones saying, well, people should  
21 have pointed things out to us in the materials that we  
22 received.

23 THE COURT: I think with regard to legal exposure  
24 that what I got from the Mr. Richardson's testimony was to the  
25 extent the corporation could be exposed legally and what the

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1 ground work looked like in deciding whether or not, and I  
2 think by the time he learned of it he said it was a fait  
3 accompli. So I don't know that -- I mean that's what I'm  
4 understanding. Maybe another board member will say something  
5 different.

6 But for now, asking Mr. Kocher whether he gave the  
7 money back implies that he was somehow implicated in some  
8 wrongdoing, vis-a-vis Retrophin, and owes them money, which is  
9 not relevant to the charges against Mr. Greebel.

10 Whether he gave the money back, whether he knows  
11 about the charges, it's a diversion and a confusing piece that  
12 has nothing whatsoever to do with the charge against  
13 Mr. Greebel. Whether the Government can prove it beyond a  
14 reasonable doubt.

15 I am just having -- I think it's a huge stretch, and  
16 it's leaping over many points of logic, and it risks opening  
17 the door to exploring Mr. Kocher's knowledge about attempts by  
18 Retrophin to get its money back, regulators looking at what  
19 happened to Retrophin. I just think that we ought to focus on  
20 what this witness knows from his own experience.

21 And even if he knew what the charges are, his  
22 charges or impressions about those charges has nothing to do  
23 with the Government's proof against Mr. Greebel. He still has  
24 the burden. The fact that he knows or doesn't know has no  
25 bearing on whether they're going to be able to prove beyond a

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1 reasonable doubt Mr. Greebel's culpability.

2 MR. BRODSKY: We won't, Your Honor, go into the  
3 witness knowledge of the charges. We will not. We will put  
4 that aside.

5 MR. KESSLER: But we will --

6 MR. BRODSKY: We won't go into that.

7 What we want to do is continue with one of our  
8 defenses, which is the benefit of the bargain theory under  
9 wire fraud. It's a well-established defense when it comes to  
10 contract fraud.

11 In order to do that, we need to show that each party  
12 got the benefit. Retrophin got a benefit, and we're going to  
13 show that through the release. And the other side got the  
14 benefit by receiving their money and they kept it.

15 If they had given it back, the Government would be  
16 eliciting, as they did during the Shkreki trial, that  
17 Mr. Yaffe was forced to give back money. And if they had  
18 required anybody to give back the money, you would have the  
19 Government here saying that that's a relevant fact that they  
20 had to give it back.

21 We are saying that if we're going to do a defense of  
22 benefit of the bargain under a contract, which the Government  
23 calls a fraud, we need to show that the parties to the  
24 contract received the benefit. We can't do that here if we're  
25 not able to elicit that one party of the contract got the

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1 proceeds, got to keep the stock, he got to keep the money.

2 We're not going allege that Mr. Kocher took stolen  
3 money, we're saying that Retrophin got the benefit of the  
4 bargain and so did Mr. Kocher.

5 MR. DUBIN: In fact to the contrary I was going to  
6 ask him, Your Honor, he didn't feel he did anything wrong or  
7 anything like that. And he certainly didn't have an  
8 obligation to give it back. I can make that clear.

9 MR. KESSLER: So just to be clear. First of all,  
10 the benefits of the bargain argument relates to a right to  
11 control theory under wire fraud, which is what we litigated in  
12 the context of the motion to dismiss. It has nothing to do  
13 with the core fraud charged here. That's point one.

14 Point two, they want to show benefit of the bargain,  
15 the record clearly shows that Retrophin got a release, and  
16 Mr. Kocher got a bunch of money. That's what the record  
17 shows. There's no evidence in the record that he gave it  
18 back. They are free to argue he still has the money.

19 If that somehow when we get to our jury instructions  
20 in the Rule 29 stage, that's a valid argument. The record  
21 already presents that.

22 But asking him if he gave the money back opens the  
23 door to all the reasons why we haven't asked for the money  
24 back. And we have to be able to explain to him why he didn't  
25 give the money back. And that is going to go to his knowledge

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1 of specific facts that I am going to elicit on redirect, and  
2 we will elicit from every single investor to explain why they  
3 haven't given the money back and what they know has happened.

4 Is that a enormous distraction under Rule 403, and  
5 none of this is relevant to the charged conduct. The  
6 contracts were entered into in 2013, 2014. It's what people  
7 were thinking then that matters. Were doing then that  
8 matters.

9 Mr. Kocher is a fact witness. I mean, frankly, I  
10 don't know why this wasn't litigated in a motion in limine.  
11 This is an extremely unorthodox and novel argument.

12 And the final thing I want to say with respect to  
13 Mr. Yaffe in the Shkreli trial, Mr. Yaffe was a coconspirator.

14 So that's why he gave the money back. Unlike  
15 Mr. Kocher, Ms. Hassan and the other investors here.

16 MR. BRODSKY: But, Your Honor, respectfully in  
17 response, one, we do have the benefit of the bargain defense,  
18 whatever the prosecution, whatever their theories are, we are  
19 defending a contract they say is fraud. Well established case  
20 law. And if Your Honor rules that we can't elicit the both  
21 benefits on both sides, that is cutting --

22 THE COURT: It's already in the record. He got  
23 money and shared in exchange for the release.

24 MR. BRODSKY: We just want to raise that he still  
25 has it, otherwise the jury is left with the speculation. And

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1 as Mr. Kessler said, we could argue it in summation, whatever  
2 we want to make of it, that he still has the money.

3 Well, we could do that. But we want to take the  
4 next step and say do you still have the money.

5 MR. DUBIN: Your Honor, I'll just ask him if he  
6 still has the money. I can just ask him. I was actually  
7 still speaking when I was cut off before.

8 And, Your Honor, I am not trying to cut you off. I  
9 am sorry if it keeps happening. But I don't understand,  
10 almost every time I open my mouth, I am cut off by the  
11 Government. And there's talking and whispering and shaking  
12 their heads and they're doing it in front of the jury. And  
13 not a word is said. And I'm trying really hard, Your Honor,  
14 not to cut you off, but, yes, I am a zealous advocate for my  
15 client. But it seems like it's raining down on me. In the  
16 manner of three different instances, getting cut off  
17 repeatedly. Shaking their head at me. This is ridiculous.  
18 And I know you can hear it because it's in --

19 THE COURT: Don't tell me what I can hear and  
20 perceive, no. I'm listening to the witness.

21 I mean if you think I'm conducting this trial in  
22 some unfair way, just make your record, all right?

23 MR. DUBIN: I'm making it now.

24 THE COURT: Okay. What have I done?

25 MR. DUBIN: I think that you are being harsh on us.

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1 I really do.

2 THE COURT: You are the only lawyer on the defense  
3 team who has done things to clutter the record with needless  
4 comments, objections, problems that you then retreat and walk  
5 away from. You've turned your back on me. You've been rude  
6 and disrespectful. And I've tolerated it because I care about  
7 Mr. Greebel getting a good trial, and I would never visit your  
8 conduct on Mr. Greebel. The other lawyers have not acted in  
9 any manner that I think is inappropriate. Any kind of  
10 inappropriate behavior has come from you.

11 And yesterday, the example when you challenged me  
12 and my rulings in a sort of nebulous way about I don't  
13 understand your rulings kind of in a very condescending way  
14 tone toward me in trying to give me examples of this large law  
15 firm question.

16 I explained to you it's because it's a misleading  
17 fact not in evidence. There was no evidence anywhere that  
18 Paul Weiss is the largest law firm in the world, which was the  
19 context of your question.

20 In order to make sure that I wasn't incorrect, I  
21 went and looked on numerous other websites trying to find out  
22 where Paul Weiss stood in the rankings. I didn't find  
23 anything where they're ranked higher than 20. And so I tried  
24 to come back and explain to you, Mr. Dubin, look, it's because  
25 it was bordering on a way did-you-stop-beating-your-wife type

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1 of question, and that was why I sustained that objection.

2 The other things you didn't give me examples of. I  
3 can't address I don't what else.

4 MR. DUBIN: Your Honor, you know what, I misspoke in  
5 my question, and I wasn't even going to bring it up. The  
6 National Law Journal ranked Paul Weiss number one as the  
7 biggest law firm in New York. So I misspoke when I said the  
8 world. I can show Your Honor the cite.

9 THE COURT: Okay.

10 MR. DUBIN: Number one in New York. The most  
11 lawyers out of any other law firm, the biggest law firm in New  
12 York.

13 There's almost a suggestion that I'm trying to, you  
14 know, did-you-beat-your-wife question. That wasn't it.

15 THE COURT: The question was the world, okay, and it  
16 was repeated.

17 MR. DUBIN: They are one of the biggest in the  
18 world. They're number 26. They are.

19 MR. BRODSKY: But, Your Honor, would you consider us  
20 eliciting the question of how much you kept of the proceeds.  
21 We're not going to go into the allegations. Mr. Dubin wasn't  
22 going to go into the allegations. That's not what he was  
23 arguing. He wanted to argue the benefit of the bargain.

24 MR. KESSLER: Your Honor, if this is critical to the  
25 defense, when get past the Rule 29 stage, when we get past



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1 jury instructions and somehow this issue is still live and  
2 this is still an argument that's permissible, we are not going  
3 to dispute that the investors have not returned their money.

4 MR. BRODSKY: If they're willing to stipulate, if  
5 they are willing to stipulate and agree to a stipulation that  
6 each and every one of these investors did not return any of  
7 the money or any of the stock, then we won't have to elicit  
8 this.

9 MR. DUBIN: The point is it's not relevant at all.  
10 They don't need a stipulation to make the arrangement. We're  
11 not making the contrary argument. But to sit in front of the  
12 jury and read a stipulation is exactly the same thing we're  
13 trying to avoid, because then we have to explain all of this.

14 MS. SMITH: The only reason they want the testimony  
15 is to make the argument in closing that because the investors  
16 didn't return their money this is not, in fact, a fraud.

17 And whether or not he's allowed to make that  
18 argument, again, this is not right to control case. The  
19 benefit of bargaining doesn't apply. We've already briefed  
20 this. We probably have to brief it again. But the question  
21 is highly prejudicial.

22 And if the information he wants is that the witness  
23 received money and shares, he received money and shares. And  
24 we're not going to dispute. If he's allowed to argue in  
25 closing somehow that if they didn't give it back. Asking that

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1 question in a manner that's been proposed suggests to the  
2 jury, which is what Mr. Biestek told you, that there was no  
3 fraud because the Government hasn't asked when, in fact, the  
4 Government will be going after that money and against the  
5 parties who caused it, which is Mr. Shkreki and Mr. Greebel.  
6 And the SEC is going after that money in a separate case.

7 So, you know, that's the point of the question, and  
8 if it's the point of the question is that, as Mr. Brodsky has  
9 said, and he doesn't have the right to argue, as we've said,  
10 and he'll have the opportunity to make his argument at  
11 closing, if he wants to, then there's no reason to ask the  
12 question.

13 MR. BRODSKY: In every wire fraud and conspiracy  
14 theory, there's substantive count where the Government alleged  
15 there's agreement, the agreement was a fraud, the argument is  
16 who controls that money. Is the money and assets Retrophin's,  
17 or is it the person who received it on the other end?

18 They are alleging that the money was taken from  
19 Retrophin, misappropriated. They use that language in the  
20 indictment. It was misappropriated. Well, that is about who  
21 controls that money, who controls the stock. And that is a  
22 benefit of the bargain defense we have to make. It's in the  
23 indictment. They can try to run away from it, but they argue  
24 it in the indictment as charged that it was misappropriated  
25 from Retrophin. We are arguing in response it was not

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1 misappropriated. Retrophin received the benefit of the  
2 bargain, and so did Mr. Kocher and the other settlement  
3 parties.

4 That is part of the our defense. We moved to  
5 dismiss, as Your Honor remembers, pretrial, and Your Honor  
6 said it's going depend on the facts. We have to see what the  
7 facts are. But we have to be allowed to establish the facts  
8 that enable us to argue the assets were not misappropriated.

9 And one of the relevant factors is these people kept  
10 the money. Another relevant factor is Retrophin was not sued  
11 by them. And that's why we're establishing that there's a  
12 release, that they threatened to sue. We're going to  
13 establish that the legal costs rising therefrom would have  
14 been substantial. That's all relevant.

15 THE COURT: Mr. Kocher is identifying Mr. Shkreki or  
16 MSMB, he was very clear not to sue Retrophin.

17 MR. BRODSKY: We are trying to establish, Your  
18 Honor, as you'll probably see on cross-examination, that he  
19 hired a lawyer, and we will establish, as we will from the  
20 facts argued, you can't sue MSMB because of the private  
21 placement memorandum restrictions. Any good lawyer would know  
22 that. MSMB had shut down and the logical --

23 MS. SMITH: Your Honor --

24 MR. BRODSKY: -- for everybody to go is the deep  
25 pockets.

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1 THE COURT: There's language in the PPM saying that  
2 both Mr. Shkreki and MSMB could be sued in the event of fraud  
3 or malfeasance.

4 MR. BRODSKY: Correct.

5 THE COURT: I'm not so sure Mr. Kocher's lawyer  
6 would have concluded that he could not sue Mr. Shkreki or  
7 MSMB, okay? And he said he had no intention of suing  
8 Retrophin.

9 MR. BRODSKY: Well, we were going to establish on  
10 cross-examination, I think Mr. Dubin will, that I think may  
11 not be true.

12 THE COURT: Okay. That's fine. That's fair.

13 But I really don't think that this question about  
14 giving money back, to the extent implies that somehow he is  
15 not entitled to have the money, and that somehow the fact that  
16 he has the money negates the Government's, you know, ability  
17 to prove its case against Mr. Greebel, I think it's too far of  
18 a leap. It's not relevant to the charges against Mr. Greebel,  
19 and you're saying if they had given it back?

20 MR. BRODSKY: The Government would be eliciting it.  
21 That's a classic case --

22 THE COURT: No, if he had given it back, I think it  
23 would be a fight about whether that comes in and whether it  
24 can be used to imply that Mr. Greebel is guilty. It's just  
25 not relevant.

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1 MR. BRODSKY: Mr. Geller testified during  
2 Mr. Shkreki's trial that he gave the money back. And that's  
3 not -- that was, under the Government's stated theory today,  
4 that would not be relevant because he gave it back for a  
5 variety of reasons. He happened to have lied to the FBI when  
6 the FBI came to him to speak to him. And so he's giving it  
7 back for all sorts of reasons, and yet they were allowed to  
8 elicit it during the trial.

9 MS. SMITH: We were told it would be elicited on  
10 cross.

11 THE COURT: But it wasn't used to argue that  
12 Mr. Shkreki, that is in evidence of Mr. Shkreki's guilt that  
13 the fact that he had some sort of an agreement with the  
14 Government whereby he gave money back was evidence of guilt  
15 against Mr. Shkreki. I just think it's not --

16 MR. BRODSKY: Okay.

17 THE COURT: -- fair or appropriate to Mr. Greebel's  
18 presumption of innocence to inject this whole thing into the  
19 trial when the Government would then have to put in evidence  
20 that it is, in fact, trying to get money back from certain  
21 individuals alleged to be wrongdoers in this whole thing.

22 MR. DUBIN: Sorry. So I'm not going to ask him if  
23 he's given any money back or that he's kept it.

24 THE COURT: I'm just trying to think of some way  
25 that you can establish --

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1 MS. SMITH: He had the money and the shares. He  
2 already testify that he received them. Did you get the wire?  
3 I assume it's in evidence. Did you receive the shares? When  
4 Martin tried to buy them back later.

5 MR. DUBIN: I could ask it that way.

6 MS. SMITH: Sure.

7 MR. DUBIN: I offer my sincere apologies to the  
8 Court.

9 THE COURT: Well, I'm not trying to --

10 MR. DUBIN: No, understood.

11 THE COURT: I'm not trying to get into any fights  
12 with you.

13 MR. DUBIN: If I turn my back, there have been times  
14 where I've walked away from the sidebar because I think there  
15 are too many attorneys. I meant no disrespect to Your Honor.  
16 I have extraordinary respect for Your Honor, and maybe perhaps  
17 my overzealousness has caused me to get frustrated. And I  
18 offer my sincere apologies to Your Honor and the court.

19 THE COURT: I'm not -- you know, I'm not taking it  
20 personally, it's just -- that, you know --

21 MR. DUBIN: I get it.

22 THE COURT: -- you've raised things and I try to  
23 address them in a certain way. I don't have these issue with  
24 any other lawyer in this room. I don't generally have issues  
25 with lawyers, but I just had a sense that there's something in

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1 our interactions that have been not entirely positive.

2 MR. DUBIN: Hopefully I can start with a clean  
3 slate.

4 THE COURT: You do. And these guys are just as  
5 zealous as you are.

6 MR. BRODSKY: Just for the record, Your Honor,  
7 Mr. Dubin's probably the most experienced defense lawyer in  
8 criminal cases, and he's been invaluable to us on this case.  
9 He's one of the leaders on our team, and I just think he does  
10 it get, as I do, and, you know, we believe in our client's  
11 innocence so much, Your Honor, that sometimes --

12 THE COURT: No, I understand, but, you know, there's  
13 certain rules of engagement that I think most people  
14 understand. All right.

15 MR. DUBIN: All right.

16 Thank you, Your Honor.

17 THE COURT: So five minutes for a break?

18 MR. DUBIN: Yes, thank you.

19 (End of sidebar conference.)

20 (Continued on the next page.)

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1 (In open court; Jury not present.)

2 (Whereupon, a recess was taken at 4:30 p.m.)

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1 (Jury enters the courtroom. Time 4:38 p.m.)

2 THE COURT: All the jurors are back. Please have a  
3 seat.

4 Sir, you're still under oath.

5 You may resume, Mr. Dubin.

6 MR. DUBIN: Thank you, your Honor.

7 CROSS EXAMINATION (Continued)

8 BY MR. DUBIN:

9 Q Mr. Kocher, you recall being shown an e-mail in which  
10 Mr. Shkreli notified you that the fund was winding down?

11 A Yes.

12 Q Can we put that up, please, it's GX104-1 already in  
13 evidence.

14 You recall receiving this e-mail, sir?

15 A Yes.

16 Q When you received this e-mail, you immediately sent --  
17 well, strike that.

18 You received this e-mail back in September, correct?

19 A That's correct.

20 Q And you didn't send Mr. Shkreli an e-mail asking to  
21 redeem your interest until March, correct?

22 A That's correct, in writing.

23 Q And you ultimately signed the settlement agreement, I  
24 think we saw that already in evidence, we'll get to that in a  
25 moment. Do you see in this e-mail where it says in the second

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1 paragraph, "We have decided the best structure for such an  
2 entity is a public company or private corporation, Retrophin  
3 LLC our MSMB founded biotechnology operation will be that  
4 company." Do you see that, sir?

5 A Yes.

6 Q You had no reason to dispute that, did you?

7 A No.

8 Q As far as you knew, that in fact was the case, that  
9 Retrophin was founded by MSMB, correct?

10 A Yes.

11 Q And Mr. Greebel is not on this e-mail, is he, sir?

12 A No.

13 Q Now, you testified earlier that you were in a situation  
14 where you needed to get cash because of a project that you had  
15 going on, correct?

16 A Yes, I had two projects.

17 Q And you would agree with, me sir, that it's often the  
18 case that -- strike that.

19 In your experience, even large successful companies  
20 get into a situation where they are in a cash crunch, right?

21 A Yes.

22 Q And they need a loan from time to time, correct?

23 A Yes.

24 Q And you could have a situation where you might not have a  
25 lot of cash but you have projects that you think are going to

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1 realize potential down the road, correct?

2 A Yes.

3 Q Now, we talked a little bit earlier about Mr. Mulleady  
4 and you relied on him 100 percent for your financial  
5 investments, right?

6 A Well, I relied on him with MSMB 100 percent, not with  
7 financial investments in general.

8 Q He seemed like a straight shooter to you, correct?

9 A Yes.

10 Q Actually, do you mind going in your binder to -- do you  
11 recall ever telling the prosecutors that you relied on  
12 Mr. Mulleady 100 percent for your financial investment, do you  
13 recall saying that to them?

14 A No.

15 Q Could you go to your binder, the one I gave you, the  
16 first tab, and look at first page, it's the fifth paragraph,  
17 the paragraph beginning, "In or around 2008," do you see that?

18 A Uh-huh.

19 Q Could you read that paragraph to yourself and let me know  
20 when you're ready.

21 A Okay.

22 Q Does that refresh your recollection that you told the  
23 prosecutors that you relied on him, that being Mr. Mulleady,  
24 100 percent for your financial investment?

25 A That's what it says here. But, no, I don't remember it.

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1 Q Do you recall when you met with the prosecutors that they  
2 were taking notes?

3 A Yes.

4 Q You were ever provided with a copy of those notes?

5 A No.

6 Q Now, at some point Mr. Mulleady goes from Smith Barney,  
7 he was your investment adviser at Smith Barney, correct?

8 A Yes.

9 Q He notifies you he was moving over to MSMB Capital?

10 A Yes.

11 Q I want to show you what I'll mark for identification as  
12 DX103-9, that would be at tab six in your binder. If you flip  
13 to the third page of that, halfway down on the left side,  
14 you'll see your e-mail.

15 A I must be in the wrong place.

16 Q Are you at tab six?

17 A This is tab six in the white binder.

18 MR. DUBIN: May I approach, your Honor?

19 THE COURT: Yes.

20 Q And Mr. Kocher, that's an e-mail that was sent to you by  
21 Mr. Mulleady on March 25, 2011, correct?

22 A Okay.

23 Q And you, and seems like a whole lot of other people,  
24 received this e-mail, right?

25 A Yes.

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1 MR. DUBIN: I would move DX103-9 into evidence.

2 MR. KESSLER: No objection.

3 THE COURT: We will receive DX103-9.

4 (Defendant's Exhibit 103-9, was received in  
5 evidence.)

6 BY MR. DUBIN:

7 Q If we go to the second page -- a lot of e-mail addresses,  
8 third page, I won't bore the jury with it, but your e-mail  
9 address is in that massive list of e-mails, right?

10 A Yes.

11 Q On the last page, if you can blow that up, when  
12 Mr. Mulleady says to you, "I am excited and pleased to  
13 announce that I have accepted a new role as Chief Executive  
14 Officer of MSMB Capital Management," you knew that to mean he  
15 was going to be the CEO, right?

16 A Yes.

17 Q "Over the past year or so I met some extremely talented  
18 individuals who work at MSMB. So when the opportunity  
19 presented itself I decided it was time to make a change. I  
20 look forward to embracing the challenges ahead and working  
21 with a team of highly motivated individuals."

22 Then it says, "MSMB is a long/short equity  
23 healthcare hedge fund located in New York City. If you would  
24 like more information about the fund, please reach out to me  
25 individually. One of the things I've learned in this

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1 transition is the importance of staying in touch with others;  
2 therefore, I wanted to give you my new address and telephone  
3 number in the hope that at some point in the future I will  
4 have the opportunity to be of assistance to you." He signs it  
5 Kevin Mulleady CEO, MSMB Capital Management, and lists the  
6 address 330 Madison Avenue, Sixth floor.

7 Sir, he wasn't going there in a sales position or  
8 anything like that, he was going there as the head guy,  
9 correct?

10 A Well, at that point that's what it looks like.

11 Q And you invested in MSMB because someone that you knew  
12 and trusted was the CEO of the company, that was one of the  
13 reasons, right?

14 A One of the reasons.

15 Q And you were ultimately introduced to Mr. Shkreli through  
16 Mr. Mulleady, correct?

17 A Yes.

18 Q And did you ever meet him in person?

19 A Yes.

20 Q When was that?

21 A At the last proceeding.

22 Q Prior to that, had you met him before?

23 A Only on the phone.

24 Q You certainly never, after speaking to him on the phone  
25 said -- well, did you speak to him on the phone prior to

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1 having a back and forth about settling?

2 A Say that again?

3 Q Did you ever have an occasion to speak to Mr. Shkreli  
4 prior to getting on the phone with him to go through settling  
5 your dispute?

6 A No, I don't believe so.

7 Q By the way, when Mr. Mulleady was telling you about MSMB  
8 did he ever mention to you a company called Elea Capital,  
9 E-L-E-A?

10 A No, not that I remember.

11 Q Did Mr. Mulleady ever tell you that Mr. Shkreli had lost  
12 a lot of money in other hedge funds in the past?

13 A No, he didn't.

14 Q There came a point in time that Mr. Mulleady was fired  
15 from MSMB, correct?

16 A Yes, I believe so.

17 Q And it was after Mr. Mulleady was fired from MSMB that  
18 you wanted to get your money out, right?

19 A Yes.

20 Q Did you ever threaten to sue Mr. Mulleady?

21 A No.

22 Q He was the CEO of MSMB, right?

23 A Well, I always thought of Martin as the head guy.

24 Q Mr. Mulleady took some responsibility for what happened,  
25 right?

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1 A In what way?

2 Q He paid some of your legal fees, didn't he?

3 A I think, I forget, he did pay I think 5,000, maybe, or I  
4 don't know the amount, but it was a small amount.

5 Q Did he ever express to you why he paid some of your legal  
6 fees?

7 A He felt bad that I wasn't able to get my money back out.

8 Q And do you still have a friendship with Mr. Mulleady?

9 A I haven't spoken to him recently, but we're on good  
10 terms.

11 Q Now, at some point you came to understand that Retrophin  
12 was a medical company that Mr. Shkreli and MSMB were  
13 interested in investing in, right?

14 A Yes.

15 Q And in fact, we just went through it, that liquidation  
16 e-mail you received certainly notes that, correct?

17 A The liquidation e-mail? I'm not sure which one your  
18 referring to.

19 Q The one that was just up on the screen, the one that you  
20 received that the fund was going to wind down?

21 A Yes.

22 Q You knew that -- so as early -- just so we're oriented in  
23 time, as early as September 2012 when you got that e-mail you  
24 knew that Retrophin was funded by MSMB, correct?

25 A I knew that MSMB had owned a portion of Retrophin, but I



SIDEBAR CONFERENCE

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1 was never really clear on the relationship. But, yes, my  
2 recollection was that they had invested in Retrophin.

3 Q Okay. And I'd like to show you what I'll mark for  
4 identification as DX103-10, that's in tab nine of your binder.  
5 You see on the bottom it says, that's an e-mail, by the way,  
6 from you to Mr. Shkreli, Mr. Greebel, and some others,  
7 correct?

8 A Yes.

9 Q You received that on March 11, 2013?

10 A Yes.

11 MR. DUBIN: I'll move DX103-10 into evidence.

12 MR. KESSLER: No objection.

13 THE COURT: We will receive 103-10.

14 (Defendant's Exhibit 103-10, was received in  
15 evidence.)

16 BY MR. DUBIN:

17 Q In this e-mail you wrote in the middle paragraph, "Per my  
18 conversation with Kevin Mulleady, my account value was  
19 approximately 280,000, which was toward the end of last year.  
20 Retrophin has gone up in value substantially since then, and I  
21 am aware that our hedge fund which funded Retrophin directly  
22 should benefit directly because of this. I am also aware that  
23 you manage both companies, which seems to me, to be a conflict  
24 of interest. If our hedge fund doesn't benefit directly from  
25 Retrophin, when it has helped fund it."

SIDEBAR CONFERENCE

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1           So here it's clear that you understood that MSMB  
2 funded Retrophin, right?

3       A     Yes, at least partially funded, I didn't know how much.

4       Q     Okay. And you are aware, as this e-mail makes clear,  
5 that Mr. Shkreli managed both MSMB and Retrophin, right?

6       A     That's correct.

7       Q     And you understood that MSMB, although you didn't know  
8 how much funding went into Retrophin, you certainly understood  
9 that MSMB had made a substantial investment in Retrophin,  
10 correct?

11      A     Yes.

12      Q     And it was your understanding that MSMB had invested  
13 something like \$10 million into Retrophin, right?

14      A     Well, apparently that was erroneous, but yes, that's what  
15 I thought.

16      Q     You weren't sure whether or not it was a loan, right?

17      A     No, I didn't know. I didn't know the relationship at  
18 all.

19      Q     If it was a loan, you would agree, sir, wouldn't you,  
20 that Retrophin would owe MSMB \$10 million, right?

21      A     If it was a loan?

22      Q     Yes.

23      A     Yes.

24      Q     Because in that case Retrophin would be holding  
25 \$10 million of MSMB's money, right?

SIDEBAR CONFERENCE

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1 A If it was a loan.

2 Q And arguably some of that could have been your money,  
3 right?

4 A That's possible.

5 Q And showing you under tab 18 of your binder what I'll  
6 mark for identification DX103-15. I'd like to focus your  
7 attention on the second page of that e-mail, then you can look  
8 at the third page as well.

9 These are e-mails that you received, that went back  
10 and forth between you and Mr. Shkreli and Mr. Trachtenberg,  
11 correct?

12 A Yes.

13 Q And this was in March of 2013, correct?

14 A Yes.

15 MR. DUBIN: And I move DX103-15 into evidence.

16 MR. KESSLER: No objection.

17 THE COURT: We will receive 103-15.

18 (Defendant's Exhibit 103-15, was received in  
19 evidence.)

20 BY MR. DUBIN:

21 Q Let's go to the second page, please. Right in that  
22 middle paragraph, where it says, "I'd like to remind you, that  
23 there was a point when it looked like we would be paid back at  
24 3.5 times our account balance before our fund helped finance  
25 Retrophin and brought Retrophin public. Again we were

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1 supposed to be redeemed before the end of the last year in  
2 either cash or Retrophin stock. I'm getting past the point of  
3 being patient."

4 In this e-mail you're acknowledging that MSMB helped  
5 fund Retrophin and brought it public, that was consistent with  
6 your understanding at the time, right?

7 A Yes.

8 Q In fact, sir, you believed that Retrophin was becoming a  
9 part of MSMB, correct?

10 A I thought MSMB owned part of Retrophin.

11 Q Could you go to, in that first tab in your binder again,  
12 35-RK1, and the third page please, the fifth paragraph from  
13 the bottom, where it references RK366, could you read that  
14 paragraph to yourself?

15 A Yes.

16 Q Does that refresh your recollection that you told the  
17 Government when you met with them back in May of this year  
18 that you believed Retrophin was going to become part of MSMB?

19 A I don't remember it, no.

20 Q Okay. Again, you didn't look at the notes that the  
21 Government was taking?

22 A No.

23 Q Is it your testimony, sir, that you may have said that  
24 and that may have been your understanding at the time, you  
25 just don't recall?

SIDEBAR CONFERENCE

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1 MR. KESSLER: Objection to the form.

2 THE COURT: Try to rephrase it.

3 MR. DUBIN: Sure, your Honor.

4 Q Is it your testimony that that very well, as of May of  
5 2017, your understanding very well may have been that  
6 Retrophin was going to become a part of MSMB, correct?

7 A No, I don't think so.

8 Q Okay.

9 A I don't remember it that way now.

10 Q So now your memory is a little bit different. Your  
11 memory is MSMB would own a part of Retrophin?

12 MR. KESSLER: Objection to the form.

13 THE COURT: Try to rephrase the question if you  
14 could, Mr. Dubin.

15 Q Regardless of which entity would own which, putting that  
16 aside, certainly your memory now, or excuse me, your  
17 understanding now is that MSMB was going to own part of  
18 Retrophin, right?

19 A Well, I remember specifically that one of the statements  
20 showed that MSMB owned or was putting money into Retrophin.

21 Q Okay. Now, I want to go to the time period where you  
22 were entering into discussions with Mr. Shkreli about settling  
23 your dispute, okay?

24 A Okay.

25 Q So at some point in February or March of 2013 I believe

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1 it was March, you tried calling Mr. Shkreli on the phone,  
2 correct?

3 A Yes.

4 Q And then you got Mr. Shkreli's e-mail from Kevin  
5 Mulleady, correct?

6 A I got -- say it again?

7 Q You got Mr. Shkreli's e-mail address from Kevin Mulleady,  
8 correct?

9 A Well, I think I had it from before, but yes.

10 Q Okay. Well, do you remember being asked questions about  
11 how you came to know about or get in contact with my client,  
12 Mr. Greebel, do you remember?

13 A Yes.

14 Q And isn't it a fact that the way you got my client's  
15 email address was from Kevin Mulleady, he gave it to you,  
16 right?

17 A Actually I'm not sure that that was the case. Whether I  
18 got it from him or whether or not Martin had CC'd Evan; in  
19 other words, on an e-mail to me and CC'd Evan.

20 Q So let me see if I can refresh your recollection.

21 Look at tab 19, I'll have you look at DX1032 for  
22 identification. You need to look on the screen or your  
23 binder. That's an e-mail that you received from Kevin  
24 Mulleady on March 8, 2013, correct?

25 A Yes, uh-huh.

SIDEBAR CONFERENCE

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1 MR. DUBIN: I move DX103-2 into evidence.

2 MR. KESSLER: No objection.

3 THE COURT: We will receive DX103-2.

4 (Defendant's Exhibit 103-2, was received in  
5 evidence.)

6 BY MR. DUBIN:

7 Q So you see that Mr. Mulleady is instructing you where to  
8 send a draft letter or a draft e-mail to and he gives you  
9 Mr. Shkreli's address and Mr. Greebel's address?

10 A Yes.

11 Q And you see where it says Evan.Greebel@KattenLaw.com?

12 A Yes.

13 Q Did you understand, sir, that Mr. Greebel was at a law  
14 firm that had many lawyers and not just him?

15 A No.

16 Q Did you look up KattenLaw.com?

17 A No, I didn't.

18 Q Does this refresh your recollection that this is how you  
19 got Mr. Greebel's e-mail address and not that he was CC'd on  
20 an e-mail?

21 A Yes.

22 Q In early 2013 you had an attorney representing you by the  
23 name of Jim Burke, correct?

24 A Yes.

25 Q And on March 11, 2013, you sent Mr. Shkreli an e-mail,

SIDEBAR CONFERENCE

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1 correct? Let me show you under tab nine again, DX103-10,  
2 that's in evidence already, correct? And this was your first  
3 written request to redeem your interest in MSMB, correct?

4 A Yes. I think it's the first written one, yes.

5 Q You CC'd Mr. Burke and you also CC'd Mr. Greebel,  
6 correct?

7 A Yes.

8 Q Now, isn't it a fact, Mr. Kocher, that the reason that  
9 you included attorneys on the e-mail is because you're trying  
10 to get Mr. Shkreli's attention and send him a message, look,  
11 I'm going to get lawyers involved, you got to take this more  
12 seriously, correct?

13 MR. KESSLER: Object to the form.

14 THE COURT: Overruled. If you can answer the  
15 question.

16 A Yes. I was, what I wanted was to get to a settlement  
17 agreement.

18 Q You wanted him to take you seriously and know that if  
19 necessary I'll get a lawyer, right?

20 A Yes.

21 Q Now, let's go to GX104-9, already in evidence. Do you  
22 remember when you were shown this document during your direct  
23 examination, you see the name Howard Cotton on the right-hand  
24 corner?

25 A Yes.



SIDEBAR CONFERENCE

2814

1 Q Sitting here today do you know that he is Mr. Greebel's  
2 law partner at Katten?

3 A No.

4 Q When you responded to Mr. Shkreli, you see if you go to,  
5 if you go down to the second page, an e-mail from Mr. Shkreli  
6 to you, second page, an e-mail from Mr. Shkreli to you on  
7 March 14, right?

8 A Okay.

9 Q And you then respond to Mr. Shkreli in that e-mail that  
10 we're seeing on the screen now?

11 A Uh-huh.

12 Q 2:38 p.m. You don't include Mr. Greebel on that e-mail,  
13 correct?

14 A That's correct.

15 Q In this e-mail, though, you say that you have already  
16 been in touch with counsel that is versed in this kind of  
17 litigation, right, and you should be hearing from them soon.

18 A Yes.

19 Q Who were you referring to, Mr. Trachtenberg?

20 A Yes.

21 Q And you say that because you wanted Mr. Shkreli to know  
22 that you were considering filing a lawsuit, right?

23 A Well, I wanted to at least get to the point where we  
24 could negotiate a settlement, but yes.

25 Q You go on to say that you have damages that have

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1 incurred, because you've been relying on what Mr. Shkreli  
2 represented to you as the manager of MSMB, right?

3 A Yes.

4 Q And you wrote that because you wanted him to know that if  
5 you filed a lawsuit you had actual monetary damages, right?

6 A Yes.

7 Q Now, you also wrote, "I believe that as manager of MSMB  
8 and CEO of Retrophin that you have not lived up to your  
9 fiduciary responsibilities to me as LP." Do you see that?

10 A Yes.

11 Q Who told you the words "fiduciary responsibility," was  
12 that you or your lawyer?

13 A No, I didn't get it from my lawyer.

14 Q You go on to say, "I will require a full accounting not  
15 just of MSMB but of Retrophin as well," correct?

16 A Yes.

17 Q You're basically putting him on notice that I'm going to  
18 ask for financial records in a lawsuit that I might file from  
19 both MSMB and from Retrophin, correct?

20 MR. KESSLER: Objection to the form.

21 THE COURT: Can you rephrase, Mr. Dubin?

22 Q You are telling Mr. Shkreli here that you are going to  
23 ask for financial records not just from MSMB, correct?

24 A Correct.

25 Q But also from Retrophin, correct?

SIDEBAR CONFERENCE

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1 A Yes.

2 Q And by the way, you never said anything in this e-mail or  
3 any other e-mail that exists anywhere in this world that would  
4 have told Mr. Shkreli or indicated to him, by the way  
5 Mr. Shkreli, I'm not going to sue Retrophin?

6 MR. KESSLER: Objection to the form.

7 THE COURT: Why don't you rephrase that, Mr. Dubin.

8 Q You never in this e-mail or any other e-mail ever limited  
9 the scope of who you might sue, correct?

10 A Well, I don't like to say never; but I'm not saying I'm  
11 going to sue anybody here.

12 Q You don't say it directly, but you would agree, sir,  
13 would you not, that by telling him you have a lawyer and also  
14 saying that you are going to get financial records, you were  
15 trying to send a clear message that you might file a lawsuit,  
16 right?

17 A Well, what I really wanted was an accounting of what my  
18 investment was. I never knew what my investment, where the  
19 money went, or you know, there was no real records of any of  
20 that. So that's really what I was getting at.

21 Q Understood. But in mentioning your attorney, copying  
22 attorneys, telling them what you were going to ask for --  
23 mentioning conflicts of interest, you also never said at the  
24 same time, by the way, even though I'm getting an attorney and  
25 asking for financial records potentially and everything else,

SIDEBAR CONFERENCE

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1 don't worry, I'm not going to sue, you never said that?

2 MR. KESSLER: Objection to form.

3 THE COURT: In this e-mail or ever?

4 Q In this e-mail, you certainly did not say that in this  
5 e-mail.

6 A What was the question again, sorry?

7 Q You certainly never said in this e-mail, even though I've  
8 already been in touch with counsel that's versed in this kind  
9 of litigation --

10 Let me ask you this, Mr. Kocher, if you're writing  
11 in an e-mail, I've already been in touch with counsel that is  
12 versed in this kind of litigation, aren't you writing that as  
13 a way to send a message to Mr. Shkreli that you might hire an  
14 attorney that will file a lawsuit?

15 A Yes, absolutely.

16 Q All right. And you didn't limit who the lawsuit would be  
17 against.

18 A No, it's not limited -- what I said there doesn't mean  
19 that that was my intent.

20 Q Understood. But you never made your intent clear other  
21 than what was written on this page?

22 A Right.

23 Q And you said, "I also believe as manager of MSMB and CEO  
24 of Retrophin," right?

25 A Yes.

## SIDEBAR CONFERENCE

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1 Q So in other words, you never made it clear here, right  
2 two sentences after when you're talking about the litigation  
3 that your attorney is well versed in this, you never made  
4 clear but you shouldn't worry I'm not going to sue MSMB or  
5 Retrophin. You never said of that, right?

6 A No.

7 Q Now, the parties to the settlement agreement that you  
8 ultimately signed, you're familiar with that document?

9 A Yes.

10 Q The parties that gave you a release were -- among the  
11 parties that gave you the release, were MSMB and Retrophin,  
12 right?

13 A That's correct.

14 Q And you go on to say that, "At the end I will make sure  
15 that this does go public and will also go to the appropriate  
16 agencies." You were getting to your wits end here, correct,  
17 sir?

18 A Yes.

19 Q And you were telling them, look, in words or substance,  
20 look, pal, I'm going to go public with this if we don't get  
21 this settled, right?

22 A Yes.

23 Q Who were the appropriate agencies in your mind, the SEC?

24 A Well, that was one.

25 Q You realized that Retrophin was a publically traded

1 company, right?

2 A Yes.

3 Q And if you go up to the reply that you got, you see that  
4 Mr. Shkreli responded to you and CC'd your lawyer, Mr. Burke,  
5 and also Mr. Greebel and Howard Cotton, correct?

6 A Yes.

7 Q Mr. Shkreli told you he was CCing not my attorney  
8 singular, my attorneys plural, right, if you want to start a  
9 dialogue with them?

10 A Yes.

11 Q And after that you hired David Trachtenberg, correct?

12 A That's correct.

13 Q Couldn't you deduce, sir, that there is a new name that  
14 comes up on the e-mail, Mr. Cotton, and Mr. Shkreli tells you  
15 I'm CCing my attorneys, plural, that Mr. Cotton was a lawyer?

16 MR. KESSLER: Objection.

17 THE COURT: Overruled.

18 A I knew who Evan Greebel was. I didn't know Howard Cotton  
19 at all, so it wasn't on my radar.

20 Q Let me ask you, I think you said earlier during your  
21 direct examination that you never gave money personally to  
22 Martin Shkreli, correct?

23 A That I never gave money?

24 Q You never invested money with Martin Shkreli as the  
25 person, you invested in MSMB, correct?

SIDEBAR CONFERENCE

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1 A Yes.

2 Q So you never threatened to sue him personally, did you?

3 A No.

4 Q So you had no understanding, did you, sir, if when he  
5 colloquially referred to "my attorneys" if he meant it as his  
6 personal attorneys or the attorneys for the various entities?

7 A No.

8 Q You had no understanding one way or another, right?

9 A No.

10 Q Mr. Trachtenberg was an attorney that Mr. Mulleady  
11 recommended to you, correct?

12 A Well, apparently it was -- I think that he had his lawyer  
13 recommend somebody. But yes, basically it came through Kevin  
14 Mulleady.

15 Q And you wanted litigation counsel to take things up the  
16 line, in your words, if necessary, correct?

17 A Well, essentially I wanted to try to force a settlement  
18 so I could get my money back, yes.

19 Q But you also understood that litigation could be  
20 expensive, right, you wanted to be practical?

21 A Yes.

22 Q Settlement would have been the best possible outcome for  
23 you, why waste money or legal fees, correct?

24 A That's correct.

25 Q On March 18, you sent another e-mail to Mr. Shkreli, and

SIDEBAR CONFERENCE

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1 I will direct you to tab 14 and I'll have it marked for  
2 identification DX103-13, you see that e-mail at the bottom of  
3 the page?

4 A Yes.

5 Q It is an e-mail that Mr. Kocher sends to -- that you send  
6 to Mr. Shkreli and it copies your attorney, correct?

7 A Yes.

8 MR. DUBIN: This is another form of the same e-mail  
9 that we've seen before, but I'll move this into evidence as  
10 103-13.

11 MR. KESSLER: No objection.

12 THE COURT: We will receive 103-13.

13 (Defendant's Exhibit 103-13, was received in  
14 evidence.)

15 Q At the top when you respond to Mr. Shkreli, you copy your  
16 new attorney on there, correct?

17 A Yes.

18 Q Then you send it to Mr. Shkreli, correct?

19 A Yes.

20 Q But you don't copy Mr. Greebel or Mr. Cotton?

21 A No.

22 Q By the way, at this point you certainly knew that  
23 Mr. Cotton was another attorney at the law firm that  
24 Mr. Greebel worked at representing MSMB, correct?

25 A No.



SIDEBAR CONFERENCE

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1 MR. KESSLER: Objection.

2 Q Look at the middle e-mail.

3 A I'm telling you I didn't pay any attention to it.

4 Q You see HowardCotton@KattenLaw.com?

5 A Yes.

6 Q In any event, taking you now to tab 18 -- well, actually,  
7 let's do it this way and skip some of these documents.

8 There were various e-mails that you wrote to  
9 Mr. Shkreli in which you told him your patience was wearing  
10 thin and you were getting annoyed and you did not mince words  
11 about that?

12 A That's correct.

13 Q There were several of those e-mails that you just sent  
14 directly to him and didn't copy Mr. Greebel on, for one reason  
15 or another, correct?

16 A Yes.

17 Q Now, so you would agree, sir, that whatever information  
18 Mr. Greebel was getting about your communications with  
19 Mr. Shkreli and your attorney, certainly didn't come from you  
20 on e-mails he was left off of, correct?

21 A Well, once my attorney stepped in he dealt directly with  
22 Evan, as far as I know.

23 Q So when you were sending e-mails, though, and leaving him  
24 off, no one ever said to you, Mr. Kocher, by the way I  
25 conveyed everything in this e-mail to Mr. Greebel, correct?

SIDEBAR CONFERENCE

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1 A That's correct.

2 Q And the only reason, I mean -- withdrawn.

3 You never heard of Mr. Greebel prior to getting the  
4 e-mail from Mr. Mulleady, correct?

5 A I don't remember.

6 Q You agree, sir, that you negotiated directly with  
7 Mr. Shkreli on some portions of the settlement agreement,  
8 correct?

9 A It started out that way.

10 Q Now, you have no idea as you sit here today what  
11 information Mr. Shkreli conveyed to Mr. Greebel about assets  
12 under management in MSMB, how much Retrophin was worth or any  
13 other matter regarding MSMB or Retrophin, correct?

14 A That's correct.

15 Q So I'm going to skip ahead and go right to the settlement  
16 agreement, it's in evidence as GX54.

17 Do you recall giving testimony about this? You can  
18 go to the next page. Actually, that first page that was the  
19 duly executed settlement agreement, right?

20 A Yes.

21 Q And, you will also be receiving the wire. You went  
22 through this settlement agreement on your direct, and you were  
23 asked some questions about the entities on that first page, do  
24 you see that?

25 A Yes.

SIDEBAR CONFERENCE

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1 Q And I think you testified that you didn't know who some  
2 of those entities were, correct?

3 A That's correct.

4 Q You didn't ask, though, did you?

5 A I didn't, no. I've, I just knew that I was in MSMB. I  
6 didn't know if it was Capital LP or Healthcare or what it was  
7 exactly. I didn't know there were many entities.

8 Q And you saw, though, at the end on the last page that  
9 Mr. Shkreli was signing on behalf of all of them, correct?

10 A Yes.

11 Q And you believed that Mr. Shkreli had that authority,  
12 correct?

13 A Yes.

14 Q And you own your own business?

15 A Yes.

16 Q As the owner you have the authority to enter into certain  
17 agreements, nothing unusual about that, right?

18 A That's correct.

19 Q And on pages one and two there is paragraph says payment  
20 terms, do you see that?

21 A Yes.

22 Q It says that, I'm not going to read through all of it I  
23 think it's been gone over on your direct, but you would get  
24 \$123,711 in cash, right?

25 A Yes.

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1 Q Then the 47,138 shares of common stock free trading,  
2 right?

3 A Yes.

4 Q You have to give back 23-some-odd-thousand shares of  
5 restricted stock you got that?

6 A That's correct.

7 Q Then you got the stock certificate that you received for  
8 the Retrophin stock, right?

9 A Yes.

10 Q Now, on page -- it has the payment terms in here. It  
11 says that you will get 123,711. It says that the MSMB  
12 entities or Retrophin individually or collectively, the payor,  
13 agree to deliver or cause to be delivered to releasor, you're  
14 the releasor, right?

15 A Yes.

16 Q The total amount of \$123,711. You never said to your  
17 lawyer or anyone else, why is Retrophin paying me. You never  
18 said that, right?

19 A No.

20 Q In fact, that made total sense to you, correct?

21 A No.

22 Q But you were just happy to be getting the money, right?

23 A That's correct.

24 Q You had no reason to doubt or disagree with the fact that  
25 Retrophin was going be the one paying you, correct?

## SIDEBAR CONFERENCE

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1 A Well, that money was actually in lieu of the shares that  
2 were given me originally.

3 Q Right. So my point is, you never disputed or had an  
4 issue with Retrophin potentially being the one paying you,  
5 correct, because you just wanted your money back?

6 A Right. At this point it was very unclear as to the  
7 relationship with MSMB entities or Retrophin. So you know, to  
8 me it was all mixed up.

9 Q Okay. On page three of the settlement agreement you see  
10 where it says voluntary act?

11 A Yes.

12 Q Did you read this document closely and in its entirety?  
13 You consulted your attorney, correct?

14 A Yes.

15 Q You signed this, that's a true statement there, right,  
16 paragraph six?

17 A Yes.

18 Q If we can go to page two, paragraph five, this is the  
19 paragraph where the releases are contained, correct?

20 A Yes.

21 Q If we can blow-up the bottom portion of it as well. Now  
22 these releases that you both gave and received, you understand  
23 as an initial matter without even looking at the document,  
24 that when you agree to release a party that you were agreeing  
25 that you will not sue them, right?

1 A Yes.

2 Q And because the MSMB entities and Retrophin was all mixed  
3 up, you had no issue as long as you were getting your money  
4 and stock to your liking with saying I'm not going to sue any  
5 of them, correct?

6 A That's correct.

7 (Continued following page.)

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1 (In open court.)

2 CROSS-EXAMINATION

3 BY MR. DUBIN (continuing):

4 Q You certainly never said to anybody, look, I will give  
5 MSMB a release, I will give Retrophin a release, but I'm not  
6 going to give other MSMB entities a release, right?

7 A Right.

8 Q And it made sense to you that you would walk away saying  
9 I won't sue any of these entities, correct?

10 A Yes.

11 Q And they won't sue me, right?

12 A Yes.

13 Q You would agree, sir, that it's a benefit to have an  
14 agreement with a party that could be involved in litigation  
15 with you, that they would agree that they are not going to sue  
16 you as well, correct?

17 A That's correct.

18 Q That was something you bargained for, right?

19 A Or my lawyer did, yes.

20 Q Or your lawyer did?

21 A Yeah.

22 Q That was, as far as you are concerned, an act of  
23 protection?

24 A Yes.

25 Q Right. And no different than on the other side, the

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1 lawyers that are representing Retrophin and MSMB protecting  
2 them when they make sure that they get a lease from you,  
3 correct?

4 MR. KESSLER: Objection.

5 THE COURT: You will have to rephrase that question.

6 Q You understood, Mr. Kocher, that whether be it  
7 Mr. Greebel, Mr. Cotton, or whoever it was that represented  
8 Mr. -- the entities in this settlement agreement, that when  
9 they got releases and got your agreement to release them, they  
10 were doing their job, from your understanding, in protecting  
11 their client, correct?

12 MR. KESSLER: Objection, "doing their job."

13 THE COURT: All right. Try to rephrase.

14 MR. DUBIN: No problem, Your Honor.

15 Q Mr. Kocher, isn't it fair to say that from your  
16 understanding that Retrophin, MSMB, and all of the MSMB  
17 entities were being protected in that agreement by getting an  
18 agreement from you not to sue them?

19 A Yes.

20 Q And you had no quarrel with the lawyers representing them  
21 protecting them in the manner that they did, did you?

22 A No.

23 Q All right. Now --

24 MR. DUBIN: Bear with me one minute. I'm just  
25 trying to skip ahead, if you will bear with me one minute,



1 Your Honor.

2 (Pause.)

3 Q Were you happy with the terms of the settlement agreement  
4 ultimately?

5 A Yes and no. I was happy to get at least my money back,  
6 but it took much longer for me to actually get my money  
7 because I -- instead of getting paid in money I got paid in  
8 stock.

9 Q But once you ultimately sold the stock -- and I know that  
10 it took you some time, but once you ultimately sold it you  
11 made a hell of a profit, didn't you, sir?

12 A I did, but it cost me money.

13 Q But even if you subtract the money it cost you, you still  
14 made a profit, right?

15 A It depends on your point of view, but I had to pull in  
16 partners on properties because I didn't have that money; and  
17 so, because of that, if you looked at it from that standpoint,  
18 then I probably didn't make money.

19 Q You invested 200,000. You walked away with upwards of  
20 350 at the end of the day, right?

21 A That's true.

22 MR. DUBIN: No further questions.

23 MR. KESSLER: No redirect.

24 THE COURT: All right. Sir, you are excused. Have  
25 a nice evening.

1 THE WITNESS: Thank you.

2 THE COURT: I'm prepared to dismiss the members of  
3 the jury at this time.

4 Sir, you can step down, and have a safe trip home.

5 THE WITNESS: Thank you. You too.

6 (Jury exits.)

7 THE COURT: All right. So tomorrow we will start at  
8 9:00.

9 Are there any issues I need to address now or before  
10 we start tomorrow?

11 MR. PITLUCK: We are happy do it tomorrow, judge.  
12 The only issue we would want to raise is the pace, especially  
13 in light of the court's comments this morning about jurors  
14 expecting to be done.

15 Obviously, we are watching the calendar and the  
16 clock; and, knowing what witnesses are coming up, when you put  
17 in the length it was going to take, certainly with Mr. Kocher,  
18 who was, in our view, one of the shorter witnesses, who  
19 started around noon today and we just finished with him. So  
20 we are communicating. We are trying to move, but it is --  
21 it's taking a long time, judge; and I think we just want to  
22 put that on the court's radar. We know it's already there,  
23 but we are very conscious of the pace and how long things are  
24 taking, and we are certainly not going to be done by next  
25 Friday.

1 THE COURT: No. We told the jurors from day one it  
2 was a five-week trial, which would be November 17. I do think  
3 the jurors have an expectation that they will not still be  
4 going at this during the week of Thanksgiving or thereafter or  
5 even as late as December 4, as the parties projected.

6 So I'm just saying keep it in mind. Hopefully we  
7 have enough in store. I have adjourned my other trials. I  
8 would hate to lose jurors, though.

9 MR. PITLUCK: So would we, judge. We are trying to  
10 be transparent in the message of how we see things progressing  
11 vis-a-vis our original estimate, and it is certainly much  
12 slower.

13 THE COURT: No. There is no doubt this is going  
14 very slowly. So, you know, I think everybody needs to keep it  
15 in mind. I'm not encouraging anyone to go to December 4. I  
16 would like to encourage everybody to stay within the five  
17 weeks that we set aside for this trial. I think we owe it to  
18 the jurors, since we told them that was the outside length of  
19 the trial, and I would just urge the parties to try to be  
20 mindful as they prepare their directs and crosses. All right.  
21 Thank you.

22 The more you can stipulate, the better. Thank you.

23 MR. PITLUCK: Thank you, judge.

24 (Trial adjourned to Wednesday, November 1, 2017, at  
25 9:00 a.m.)

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